



Overseas Students Ombudsman

REPORT ON THE FIRST FOUR YEARS OF OPERATION

November 2015

Report by the Overseas Students Ombudsman,
Mr Colin Neave, under the *Ombudsman Act 1976*

REPORT NO. **06|2015**

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EXECUTIVE SUMMARY

In 2014 there were 450,000 international students studying in Australia with international education, contributing around \$17 billion to the Australian economy and supporting nearly 130,000 jobs nationally.¹

However, the true value of international education lies in creating positive experiences for international students that lead to long-term connections and relationships across the globe, which cannot be easily quantified.

The quality of these connections and relationships rests in part on the experiences of international students with their education providers from pre-enrolment to post-graduation. If problems arise, the availability of an independent, impartial complaints and appeals body, such as the Overseas Students Ombudsman (OSO), can be critical to resolving problems and restoring student confidence in Australia's international education services.

The Overseas Students Ombudsman was established in April 2011 to hear complaints from international students in the *private* sector, who previously lacked an independent complaints and appeals body.

The OSO has three main functions:

- investigating individual complaints about the actions or decisions of a private-registered education provider in connection with an intending, current or former overseas student
- working with private registered education providers to promote best-practice handling of overseas students' complaints, and
- reporting on trends and broader issues that arise from complaint investigations.

This report outlines our activities and outcomes in our first four years of operations. In this period, the OSO received 2150 complaints and external appeals from overseas students originating from over 68 countries about more than a third of the 911 private registered providers in our jurisdiction².

Complaint numbers have been increasing steadily in the past two years, with a 30% increase in our fourth year ending on 8 April 2015. We anticipate a continued increase in complaints and external appeals to the OSO, as the international education sector continues to grow.

The 2150 complaints we received contained 2465 issues. The top four complaint issues up to 8 April 2015 were:

1. refund complaints and fee disputes (740)
2. transfer external appeals about providers refusing to release a student so that they can transfer to another provider under standard 7 of the National Code (402)

¹ International Education Services, Productivity Commission Research Paper, April 2015 and the Draft National Strategy on International Education, Department of Education and Training, April 2015.

² According to data from the Provider Registration and International Students Management System (PRISMS) as at 2 October 2015.

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3. attendance external appeals against the decisions of providers to report students to the Department of Immigration and Border Protection (DIBP) for unsatisfactory attendance under standard 11 of the National Code (282)
4. course progress external appeals against the decisions of providers to report students to DIBP for unsatisfactory course progress under standard 10 of the National Code (252).

Across the top four complaint issues, we found in support of the student in nearly 40% of complaints investigated and in support of providers in 41% of cases. Providers reconsidered their decision in 10% of cases while the OSO was still investigating the complaint. The remaining cases were otherwise finalised, including complaint withdrawn, lapsed or transferred to another complaint body after investigation commenced.

VET enrolments make up the largest proportion of overseas student enrolments in the private sector and therefore the OSO's jurisdiction (86%). This is followed by ELICOS (79%); Schools (40%); Non-Award (18%) and Higher Education (15%) enrolments.

Our complaints data reflect that the largest number of complaints investigated have been from students enrolled in VET courses with smaller numbers of complaints about private Higher Education, ELICOS, Non-Award and schools courses. The complaint issues are similar across the education sectors, with some sector-specific variations.

While we have identified some instances of non-compliance, the majority of education providers readily accept our recommendations. Additionally, our work on systemic issues has been welcomed by the sector.

By resolving individual problems and identifying systemic issues and trends, our goal is to enhance the student experience and Australia's international reputation as an education destination.

A recent Senate Committee investigating the VET sector noted that numerous witnesses throughout the course of the inquiry recommended that domestic students of VET providers would benefit from having a specifically focused Ombudsman to assist with resolving complaints. The Committee recommended that an Ombudsman focused on domestic students in the VET sector be created, and further suggests that this position be industry-funded.

The OSO would welcome the opportunity to extend our jurisdiction to deal more comprehensively with broader student issues. This could include international students studying on a temporary visa other than a student visa (e.g. visitor visa, working holiday maker visa) and students studying with Australian private education providers offshore (transnational education). Of course this is a matter for government to decide.

We look forward to continuing to work with government, providers, students and other complaint handlers to continue to maintain a strong consumer protection framework for international students studying in Australia.

1. ROLE OF THE OSO

- 1.1 The Education Services for Overseas Students (ESOS) regulatory framework encompasses a suite of measures designed to provide assurance to overseas students that they have a right to receive a quality education in Australia and the right to complain if they believe their education provider is not meeting its obligations.
- 1.2 The OSO is an independent, impartial, external complaints and appeals body that can hear complaints from intending, current and former overseas students about private registered education providers. We form a key part of Australia's consumer protection framework for overseas students.
- 1.3 The OSO was established in April 2011 following a recommendation by the Hon Bruce Baird in his review of the *Education Services for Overseas Students Act 2000* (the ESOS Act)³. While the review recognised the benefits of the growing international education sector, it found the unparalleled growth in the sector up to 2009 had resulted in damaging pressures affecting education quality, regulatory capacity and student tuition protection infrastructure. The review noted that these pressures had adversely impacted on international students' experiences in Australia and Australia's reputation for international education.
- 1.4 The review also recognised that overseas students studying with private education providers were particularly vulnerable, as they lacked access to a statutorily independent complaint handling body⁴. Overseas students attending public education providers could complain to the relevant state or territory ombudsman but there was no ombudsman to take complaints from overseas students studying with private education providers. For this reason, the Baird Review recommended the Commonwealth Ombudsman's jurisdiction be extended to include complaints from overseas students about the actions of private education providers and establish the Overseas Students Ombudsman within the Commonwealth Ombudsman's office.
- 1.5 The OSO assists both private education providers and overseas students by:
- encouraging overseas students to initially raise their concerns with the provider and use their internal complaints and appeals process
 - investigating complaints from overseas students to determine if a private provider has followed the ESOS Act, the National Code and their own policies and procedures correctly
 - acting as an independent appeal body to hear complaints where a student is not satisfied with the result or conduct of the internal complaint and appeals process
 - identifying appropriate remedies for students where substantive errors or non-compliance by a provider are identified
 - making recommendations and suggestions to help providers improve their policies, practices and staff training, and

³ Stronger, simpler, smarter ESOS: Supporting international students, *Review of the Education Services for Overseas Students (ESOS) Act 2000*

⁴ Prior to the establishment of the OSO, providers enrolling overseas students were required to have an external complaints mechanism in place however, outside South Australia, there was no statutorily independent body to fulfil this role.

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- giving providers advice on best practice complaints handling to help providers resolve complaints directly with overseas students to prevent repeat problems.

Consumer Protection Framework for Overseas Students

1.6 Australia has a strong consumer protection framework for overseas students, which includes the:

- ESOS Act
- National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007 (the National Code)
- Education and training regulators: the Tertiary Education Quality and Standards Agency (TEQSA), the Australian Skills Quality Authority (ASQA), state and territory schools regulators
- Tuition Protection Service (TPS)
- Overseas Students Ombudsman (OSO)
- State and territory Ombudsman Offices and South Australian Office of the Training Advocate and
- Australian Consumer Law principles.

1.7 All education providers who wish to enrol students holding a student visa must be registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS)⁵. CRICOS-registered providers must comply with the ESOS framework, which is comprised of the ESOS Act, statutory instruments made under the ESOS Act and the National Code.

1.8 The National Code contains 15 nationally consistent standards, which support the ESOS framework and protect the interests of overseas students. Standard 8 of the National Code, 'Complaints and Appeals', requires all registered education providers to have 'an appropriate internal complaints handling and appeals process' in place. If a student is dissatisfied with the result or conduct of the provider's internal complaints and appeals process, the provider must advise the student of their right to access an independent and external complaints and appeals process at minimal or no cost⁶.

1.9 The OSO is one such external complaint body for intending, current and former overseas students in the *private* education and training sector. State and territory Ombudsman provide an appeals service for overseas students studying with *public* education providers. The South Australian Office of the Training Advocate acts as an advocate for overseas students and also provides a complaints and appeals service for overseas students studying with both public and private registered education providers in South Australia.

⁵ CRICOS is a publicly available register, accessible at: www.cricos.education.gov.au

⁶ Standard 8.1 and 8.2 https://internationaleducation.gov.au/Regulatory-Information/Education-Services-for-Overseas-Students-ESOS-Legislative-Framework/National-Code/Documents/National_Code_2007_pdf.pdf

2. OSO COMPLAINT TRENDS, ISSUES AND OUTCOMES

2.1 In the first four years of operation the OSO received 2150 complaints and external appeals from overseas students originating from over 68 countries, more than one-third of the 975 private registered providers in our jurisdiction⁷. The OSO's jurisdiction includes the majority of registered education providers (85% are private) and 41.9% of overseas student enrolments.⁸

2.2 Initially, a significant number of old refund complaints from intending overseas students outside Australia who had been refused a visa and were entitled to a refund that the provider had refused to provide were received by OSO. Before the commencement of OSO these students did not have a formal complaint outlet.

2.3 This peak of complaints was followed by an 18% reduction the next year.

2.4 In the third year and fourth years, complaints increased by 10% and 30% respectively. We believe this is due to the increasing number of international students studying in Australia⁹ and greater awareness amongst international students of our role and services. It may also reflect the growing number of private providers who refer overseas students to our office as an external complaints and appeals body. For these reasons, we expect the increase in complaints and appeals to continue.

Figure 1: Total number of complaints over four years

Year of operations	Total number of complaints received
Year 1: 9 April 2011 – 8 April 2012	553
Year 2: “ 2013	453
Year 3: “ 2014	495
Year 4: “ 2015	649
Total	2150

Complaint issues

2.5 Our office records issues against all complaints that we receive. Many complaints involve more than one issue. For example a student might complain that their refund request was rejected but the provider did not provide them with an outcome to their refund complaint. This complaint would raise two issues: the refund refusal decision and the provider's complaints handling process (lack of written outcome). In other cases the student may complain that their education provider is about to report them to immigration for unsatisfactory attendance but they want to

⁷ According to PRISMS data as at 1 October 2014.

⁸ DET data for the three months up to 1 March 2015.

⁹ In 2014 the number of international students in Australia increased by more than 10% on 2013 levels. www.pc.gov.au/research/completed/international-education

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transfer to another provider as they are not happy with the quality of their course and they want a refund but the provider has refused (four issues).

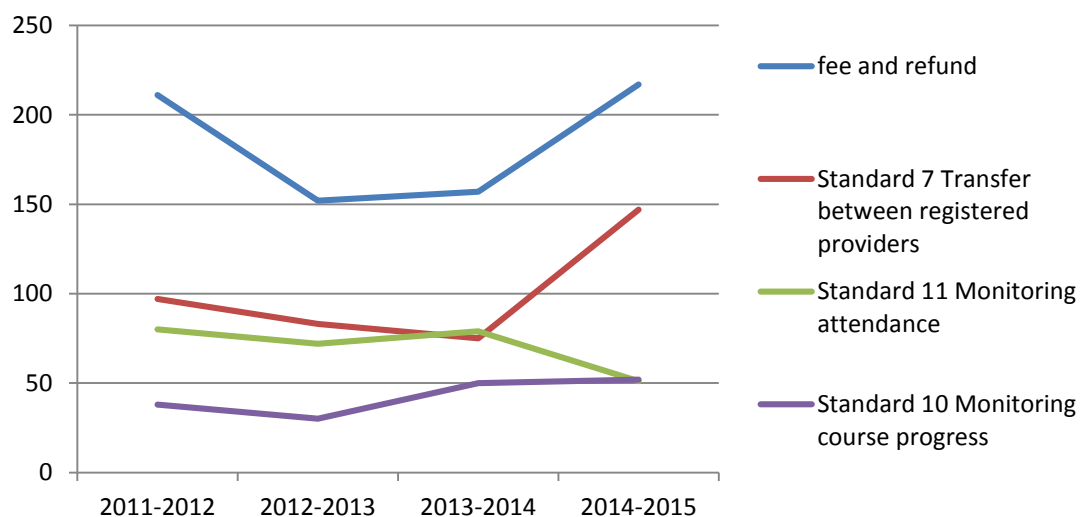
2.6 The 2150 complaints received by the OSO contained 2467 issues. Appendix 1 shows the breakdown of issues received each year. The top four complaint issues received up to 8 April 2011 are consistent, but not always in the same order:

- refund complaints and fee disputes (740)
- external appeals about providers refusing to release a student so that they can transfer to another provider under standard 7 of the National Code (402)
- external appeals against the decisions of providers to report students to the Department of Immigration and Border Protection (DIBP) for unsatisfactory attendance under standard 11 of the National Code (282)
- external appeals against the decisions of providers to report students to DIBP for unsatisfactory course progress under standard 10 of the National Code (252).

2.7 Other complaint types received by the OSO include:

- grades/assessment (123)
- deferring, suspending or cancelling the student's enrolment (101)
- providers' internal complaints and appeals processes (87)
- graduation/completion certificates (87)
- education agents (41).

Figure 2: Top four complaint figures over four years



Outcomes for top four complaint issues

2.8 The outcome of a complaint investigation can support either the student or the provider. Where we find in support of a student, possible remedies include asking a provider to:

- apologise
- change or reconsider a decision
- change their policies or procedures
- pay a full or partial refund
- not report the student to DIBP for unsatisfactory course progress or attendance.

2.9 Where we find in support of the provider because it has followed the relevant legislation and its policies appropriately, we tell the student first, explain our reasons and give the student an opportunity to comment, before advising the provider of the outcome.

2.10 If the student has not exhausted the provider's internal complaints and appeals process before coming to us, or they give us additional evidence that the provider has not seen, we refer the student back to the provider. In some cases, after we have commenced an investigation, the provider reconsiders their decision and decides in support of the student.

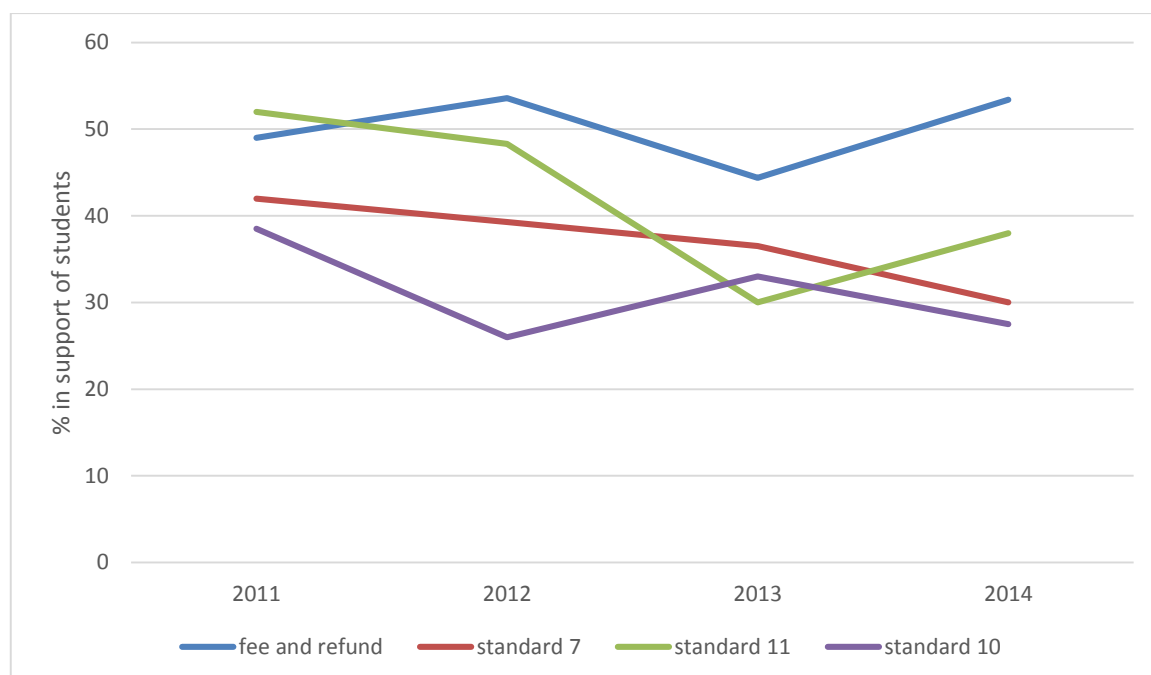
2.11 Where another complaint handling agency could more efficiently and conveniently consider a matter, we transfer the complaint to that agency.

2.12 Other outcomes include the student withdrawing the complaint or the complaint lapsing where a student fails to provide necessary information.

2.13 The graph on the next page shows the percentage of cases decided in support of the student¹⁰. It shows that we have been increasingly finding in support of the student in attendance (standard 11) and fee and refund complaints, since 2013, due to provider errors. However, there has been a recent improvement in provider practices in relation to course progress (standard 10) and provider transfer (standard 7) complaints, resulting in fewer decisions in support of the student.

¹⁰ There was insufficient outcome data, in April 2015 to include results for 2015.

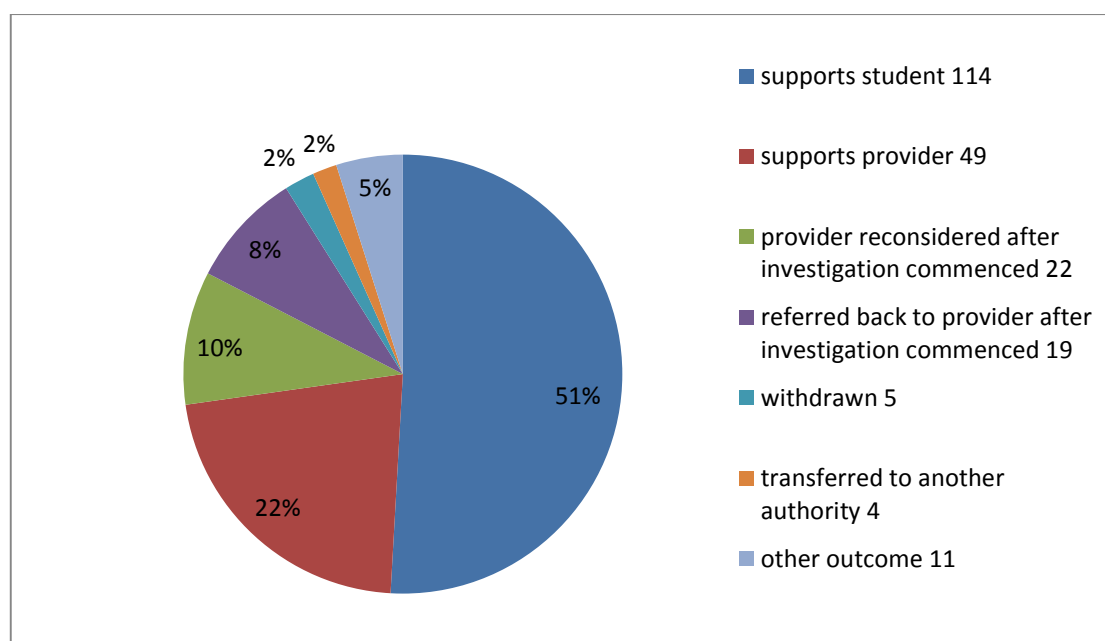
Figure 3: Outcome trends for top four complaint issues



Fee and refund complaints

2.14 The OSO received 680 fee and refund complaints, 456 of which we finalised without investigating. Outcomes for the fee and refund complaints that we investigated are set out below:

Figure 3: Fee and refund complaint appeal outcomes 9 April 11 to 8 April 15¹¹



¹¹ Please note the outcomes are recorded against complaints rather than issues in this table.

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2.15 Fee and refund complaints are the most common type of complaint the OSO receives, accounting for nearly a third of all overseas student complaints to our office. We have investigated about one third of these. Many fee and refund complaints are finalised without the need to investigate because the student provides us with their written agreement and the provider's appeal outcome letter. If we determine that the provider has made a reasonable and lawful determination, we can decide the case on the papers, without the need to contact the provider.

2.16 In the fee and refund cases we investigated, we found in support of the student in 51% of the cases and 22% in favour of the provider. Often the written agreement is not compliant with the ESOS Act or the National Code. In such cases, the provider must refund the student under s 47E of the ESOS Act. In other cases, we have found in support of the student because the provider is seeking to recover outstanding fees that the written agreement does not clearly allow the provider to charge the student.

Addressing the root causes of fee and refund complaints

2.17 In 2014, we consulted with the sector about the high number of refund complaints and fee disputes we were receiving and the high incidence of non-compliance we were seeing with education providers' written agreements (which include the provider's refund and fee cancellation policies). We circulated a draft issues paper and provider checklist for comment.

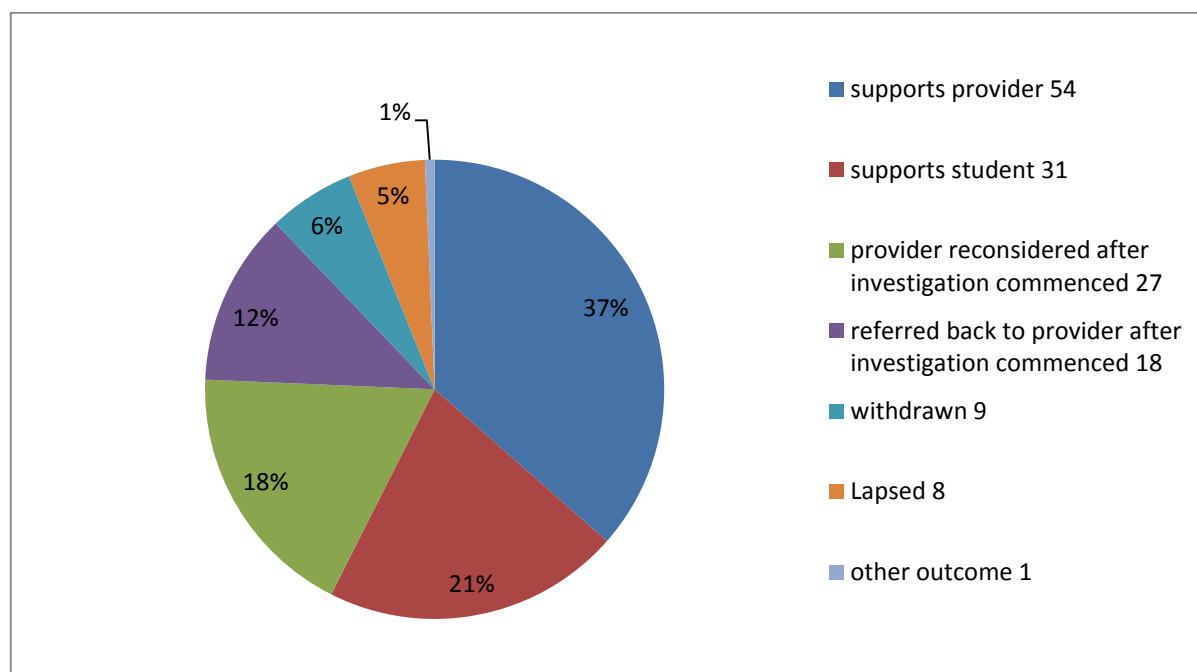
2.18 In March 2015 we published a final written agreement issues paper and provider checklist to help providers ensure they have a compliant written agreement, which students can understand, that can be relied on when refund and fee disputes arise.

2.19 In 2014 and 2015, we delivered webinars to Australian Council for Private Education and Training (ACPET) and English Australia (EA) provider members on written agreements and the common mistakes we see. One of the OSO's aims is to ensure providers have a compliant written agreement. We have found that a compliant written agreement addresses the root cause of most refund and fee dispute complaints.

Provider transfer appeals

2.20 The OSO received 371 standard 7 provider transfer appeals and finalised 223 without investigating. Outcomes for the 148 transfer appeals that the OSO investigated are set out below:

Figure 4: Standard 7 provider transfer appeal outcomes 9 April 11 to 8 April 15¹²



2.21 The second most common type of complaint to the OSO were external appeals from students refused a release letter by their original provider preventing them from transferring to another provider. Correspondingly, fee/refund complaints and provider transfer appeals have increased (see figure 4) because students seeking to transfer between providers frequently seek a refund of fees, or complain about cancellation fees, as a result of their withdrawal from a course.

2.22 Standard 7 of the National Code requires providers to have a transfer policy in place to deal with transfer requests, which must include the circumstances in which a transfer will be granted and the circumstances the provider considers reasonable for refusing the student's request. However, the preamble to Standard 7 states that it is expected that the student's transfer request will be granted where the transfer will not be to the student's detriment.

2.23 In some cases, we find in support of the student on the basis that the provider's transfer policy does not meet all of the requirements of Standard 7 and is therefore non-compliant.

2.24 In other cases, we find in support of the student on the basis that the provider has refused to grant a release letter without demonstrating that the transfer would be to the student's detriment.

¹² 9 April 11 to 8 April 15. Please note the outcomes are recorded against complaints about an issue rather than each individual issue in this table.

Addressing the root causes of provider transfer appeals

2.25 In March and October 2014, the OSO made submissions to the Department of Education and Training (DET) on the proposed revision of the National Code. The submission included comments regarding observations of the mistakes providers make when assessing student requests for provider transfers under Standard 7.

2.26 In December 2014, the OSO made a submission to the DIBP review of the Streamlined Visa Processing (SVP) arrangements, noting that our office has experienced an increase in provider transfer appeals from students of SVP providers.

2.27 In 2015, the OSO presented at the DET ESOS Reform workshop and other provider workshops on the issues we see with provider transfer appeals. We understand DET is considering Standard 7 provider transfers as part of the current ESOS Reforms process.

Course progress and attendance external appeals

2.28 All primary student visa holders have a mandatory visa condition (8202):

You **must** maintain satisfactory attendance in your course and course progress for each study period as required by your education provider.¹³

2.29 To maintain the integrity of the Australian Government's student visa program, education providers are required to report overseas students who fail to achieve satisfactory course progress and/or attendance to DET and DIBP. The authority for this is contained in s 19 of the ESOS Act.

2.30 The National Code requires education providers to be proactive in warning and assisting students who are at risk of failing to meet course progress and/or attendance requirements. If a student subsequently fails to achieve satisfactory course progress and/or attendance, the provider must notify the student in writing that it intends to report them. The written notice must inform the student that they are able to access the registered provider's complaints and appeal process. If the student is not satisfied with the result or the process of the internal complaint handling and appeals process, the provider must advise the student in writing of their right to access the external appeal process.

2.31 The OSO investigates course progress and attendance appeals where possible, for two reasons:

- there is a potentially serious consequence to the student if he or she is reported to DIBP for unsatisfactory attendance or course progress of having their visa cancelled
- to ensure the provider's intention to report is consistent with all the requirements set out in the National Code.

2.32 The OSO received and closed 265 standard 11 appeals. Twenty seven of these were resolved without investigation. We received and closed 161 course progress appeals in this period and resolved 11 without investigation. The outcomes for the standard 10 and 11 appeals that we received and investigated are set out below:

¹³ www.immi.gov.au/students/visa-conditions-students.htm

Figure 6: Unsatisfactory attendance appeal outcomes 9 April 2011 to 8 April 2015

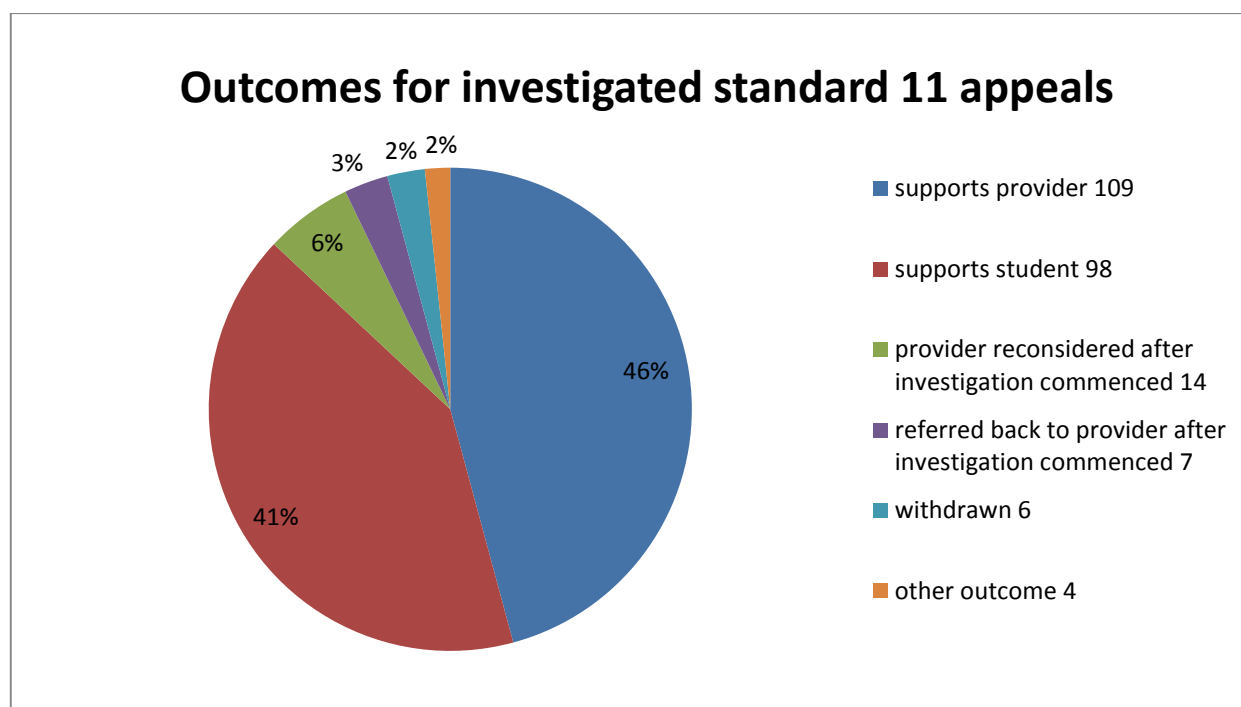
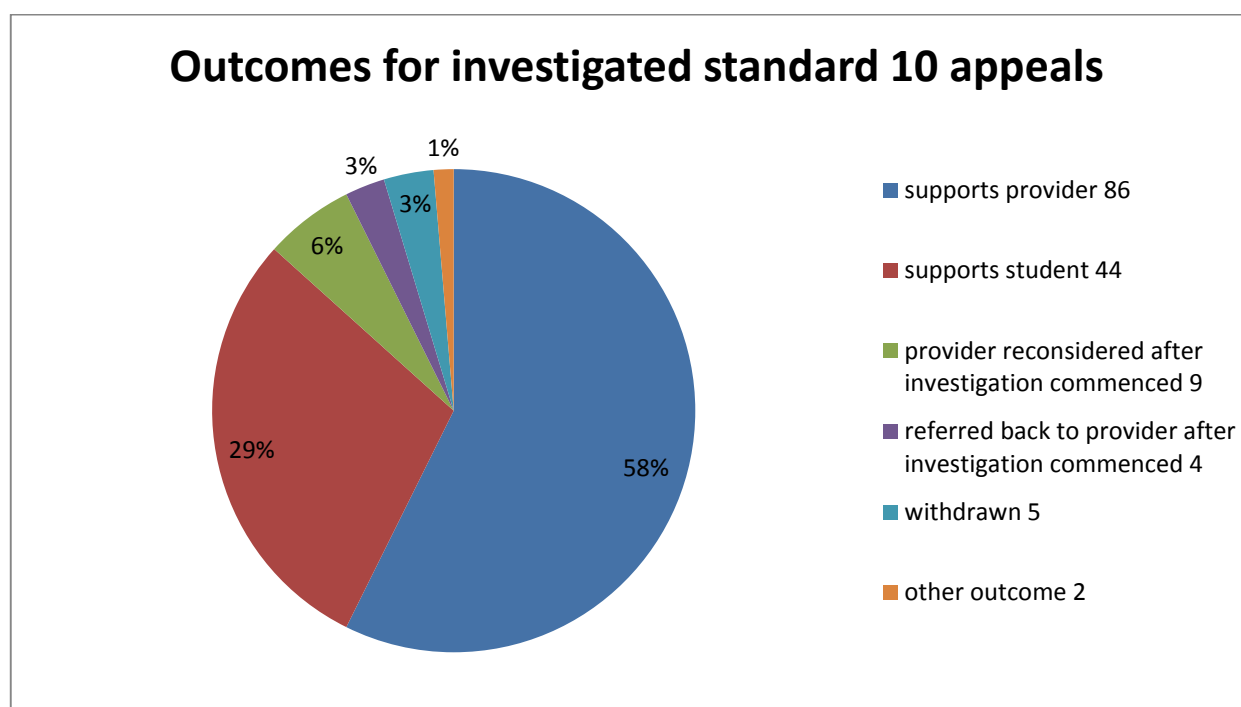


Figure 7: Unsatisfactory progress appeal outcomes 9 April 2011 to 8 April 2015



2.33 The OSO receives more unsatisfactory attendance appeals than course progress appeals. A student is more likely to fail attendance requirements sooner than they fail course progress. Course progress is generally assessed over a longer period (often two consecutive study periods), whereas attendance is often assessed over one study period or period of enrolment. The short length of many English

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language courses also makes it more likely that a student who misses some classes may fail to meet the attendance requirements even if their course progress remains satisfactory.

2.34 The requirements of Standard 10 (monitoring and reporting on course progress) are also more straightforward, with less steps than Standard 11 (monitoring and reporting on attendance). Recording and calculating attendance can be a complex process, potentially subject to more unintended errors than judging academic progress at the end of a term or semester. Therefore, it may be administratively more likely that providers comply with Standard 10 than Standard 11. Our outcomes data would appear to support this view, as we found providers had followed Standard 10 course progress requirements correctly in about two thirds of the appeals compared to only about half the time in Standard 11 attendance appeals.

2.35 We also acknowledge that for very short English language courses of only a few weeks duration, it is difficult for providers to meet the requirement of Standard 11 to send a warning letter to the student before their attendance falls below 80%. Therefore, while the provider may do their best to issue the warning letter as quickly as possible, if an absence of one day takes the student's attendance from a satisfactory level to below 80%, it is administratively challenging for the provider to meet the warning requirement of Standard 11. However, in other cases, providers make other types of mistakes, such as miscalculating attendance, which also results in a finding in support of the student.

Addressing the root causes of course progress and attendance appeals

2.36 In May 2015, the OSO published an issues paper on course progress and attendance, outlining the common mistakes we see education providers make in monitoring and reporting on overseas students' course progress and attendance.

2.37 We also published a fact sheet about student rights and responsibilities in relation to course progress and attendance and the OSO's role in investigating external appeals from students about to be reported to DIBP for unsatisfactory course progress or attendance.

2.38 Education providers can use the OSO's insights to:

- monitor whether they are meeting best practice
- improve their monitoring and reporting of course progress and attendance
- inform their consideration of course progress and attendance internal appeals.

2.39 International students can use the fact sheet to know:

- their rights and responsibilities in relation to course progress and attendance
- what to expect from their education provider
- how to appeal to the OSO.

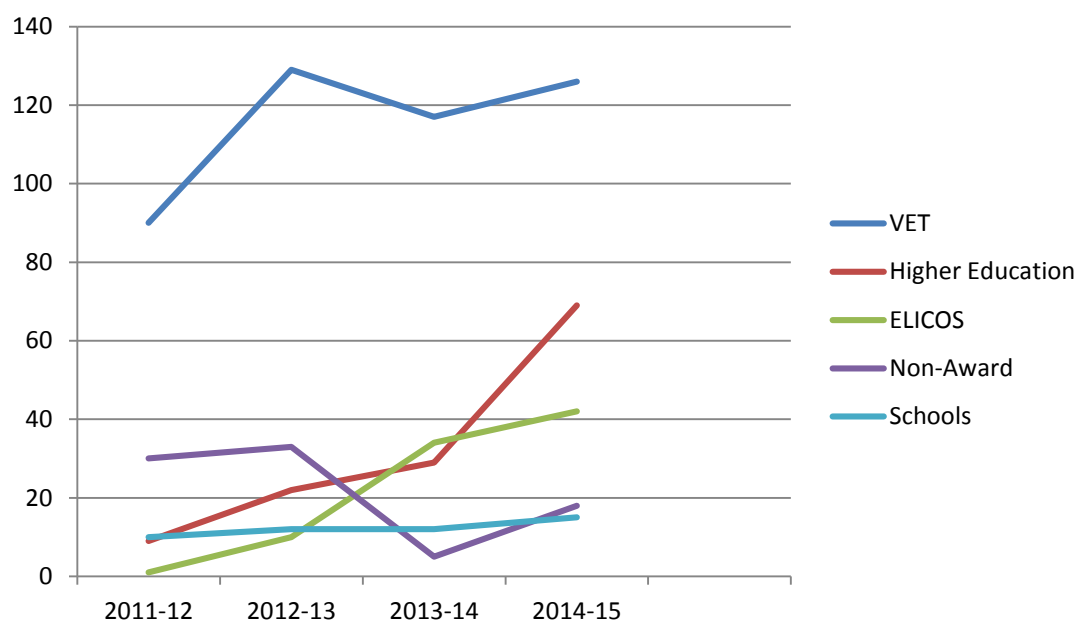
Issues by course sector¹⁴

2.40 The OSO covers private registered providers in all five education sectors in the international education system:

- Higher Education
- Vocational Education and Training (VET)
- ELICOS
- Non-Award
- Schools

2.41 An analysis of OSO complaints data shows the largest number of complaints investigated are from students enrolled in VET courses (86%) then complaints about private Higher Education, ELICOS, Non-Award and Schools courses.

Figure 8: Number of issues investigated per sector



2.42 VET make up the largest proportion of overseas student enrolments in the private sector followed by ELICOS (79%), Schools (40%); Non-Award (18%) and Higher Education (15%) enrolments.

¹⁴ We record the course sector of the student which in some instances may differ from the provider's main course sector. This also correlates with the DIBP's recording of commencements per sector.

Figure 9: International Student Enrolments

International Student Enrolments: provider type, YTD March 2015						
Sector	Enrolments			Share of sector (%)		
	Public	Private	Total	Public	Private	Total
Higher Education	184,798	32,483	217,281	85.1	14.9	100.0
VET	13,395	79,506	92,901	14.4	85.6	100.0
ELICOS	14,098	51,364	65,462	21.5	78.5	100.0
Schools	9,041	5,903	14,944	60.5	39.5	100.0
Non-Award	18,436	4,008	22,444	82.1	17.9	100.0
All sectors	239,768	173,264	413,032	58.1	41.9	100.0

2.43 Standard 11 Attendance monitoring was the top complaint issue for VET, ELICOS, Schools and Non-Award courses. Standard 10 Course Progress monitoring was the top complaint issue for Higher Education (Higher Education courses are not subject to Standard 11 as providers are not required to monitor attendance for these courses).

2.44 Fee and refund complaints were the second highest complaint issues for Higher Education, VET, ELICOS and Non-Award courses and the third highest for Schools. Standard 7 provider transfers were the second highest issue for Schools; the third highest issue for Higher Education, VET and ELICOS and; the fourth issue for Non-Award courses.

2.45 The four highest complaint issue for VET was Standard 10 Course Progress; for ELICOS it was Standard 4 Education agents; for Schools it was Standard 13 Deferring, suspending or cancelling the student's enrolment and; for Higher Education it was Standard 8 Complaints and appeals.

Complaint transfers

2.46 Some complaint issues can be better dealt with by other complaint handlers. If the OSO considers a complaint could be more effectively dealt with by a statutory office-holder that has the function of investigating, reviewing or enquiring into that kind of action, then the OSO may decide not to investigate, or further investigate, and must transfer the complaint to that office.¹⁵ For this reason, we transfer complaints about the quality of a provider's staff, educational resources or premises to the appropriate regulator¹⁶. This includes complaints alleging fraudulent and/or unlawful provider behavior. We also transfer complaints to the TPS about provider closures or providers failing to pay refunds to students who cannot commence their course due to a student visa refusal.

¹⁵ Section 19ZK of the *Ombudsman Act 1976*

¹⁶ The regulators are the Australian Skills Quality Authority (ASQA) for Vocational Education and Training (VET) or stand-alone English language courses; the Tertiary Education Quality Standards Agency (TEQSA) for Higher Education courses, foundation courses and pathway English language courses and; the schools regulators in each state and territory.

Figure 10: Complaint transfers under s19ZK of the Ombudsman Act

Receiving complaints body	Total complaints transferred by the OSO
Australian Skill Quality Authority	85
Tuition Protection Service	80
South Australian Training Advocate	14
Australian Human Rights Commission	5
Western Australian Training Accreditation Council	4
Victorian Registration and Quality Authority	2
Australian Competition and Consumer Commission	1
Former Queensland State Regulator	1
Tertiary Education Quality Standards Agency	1
Total	193

Complaint referrals

2.47 The OSO also has discretion not to investigate where:

- the complainant has not yet raised the complaint with the registered provider
- the action came to the complainant’s knowledge more than 12 months before the complaint was made
- investigation of the complaint is not warranted having regard to all the circumstances, for example, if the information provided by the student shows that the provider acted reasonably or if there is no reasonable prospect of a better outcome for the student
- the complaint is frivolous or vexatious.

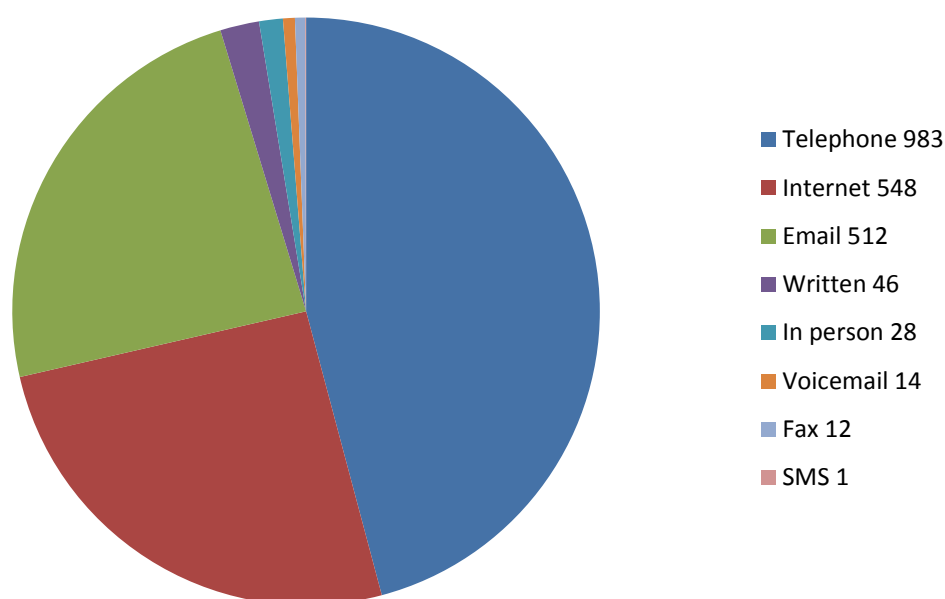
2.48 In 1255 cases we declined to investigate for one of the above reasons.

3. OSO COMPLAINTS SERVICES

Accessibility

3.1 The OSO's services are free for students and designed to be easy to access. Overseas students can complain directly to us or authorise someone to make a complaint on their behalf. We provide free telephone interpreter services for students who require it. Students can lodge a complaint through our online complaints form, by phone, post, fax or in person at one of our offices.

Figure 11: How students contact the OSO



3.2 Telephone has been the most popular method for initial contact by overseas students. In the January to March 2015 quarter, the number of complaints received by telephone and via our online complaints form has increased. The number of complaints received by email has decreased¹⁷. We welcome increased use of the online complaints form as it captures specific information required to assess, resolve or transfer complaints without multiple contacts with the student. Similarly, when students make a complaint by telephone, our staff obtain the information needed to manage the complaint.

3.3 Complaints received by email can omit important information which can require additional contact with the student. We have therefore decided to phase out email as a lodgement method.

¹⁷ There were 24 complaints received by email during this period (compared to 47 in the previous period) and 58 received by smart form (compared to 40 in the previous period).

3.4 Figure 12 indicates the increasing number of complaints received by internet in the January to March 2015 quarter.

Figure 12: How complaints received January to March 2015

	Email	Fax	In Person	Internet	Phone	Total
Jan 2015	7	1		11	28	47
Feb 2015	9			18	23	50
Mar 2015	8		2	29	25	64
Total	24	1	2	58	76	161

Complaint processing times

3.5 Complaints are divided into four categories depending on the complexity of the matter. Category one are generally closed on the same day; category two are finalised without investigation (although contact will usually have been made with the student); category three are investigated; category four are investigated where multiple contacts with the provider were required to finalise the investigation and; category five complaints are those that resulted in a formal report.

3.6 The average processing times for each complaint category are:

- Category one: 1.25 day
- Category two: 14.75 days
- Category three: 84 days
- Category four: 138 days

3.7 In our fourth year of operation our complaint numbers increased by just over one third compared to the previous year.¹⁸ We believe this is due to the increase in international students studying in Australia and the greater awareness of our role amongst students and providers following our engagement with provider and student bodies. Pleasingly, in the same period our average processing times across all categories of complaint decreased, as figures 13 and 14 show. This is perhaps attributable to our growing expertise in handling overseas student complaints. The increase in online and telephone complaints may also assist in reducing the time taken at the start of a complaint to gather the information we need from a student, before we can investigate.

¹⁸ Between 9 April 2013 and 8 April 2014 we received 495 complaints; between 9 April 2014 and 8 April 2015 we received 648 complaints.

Figure 13: Comparison between complaints received, investigated and average days taken to close in first four years of operation

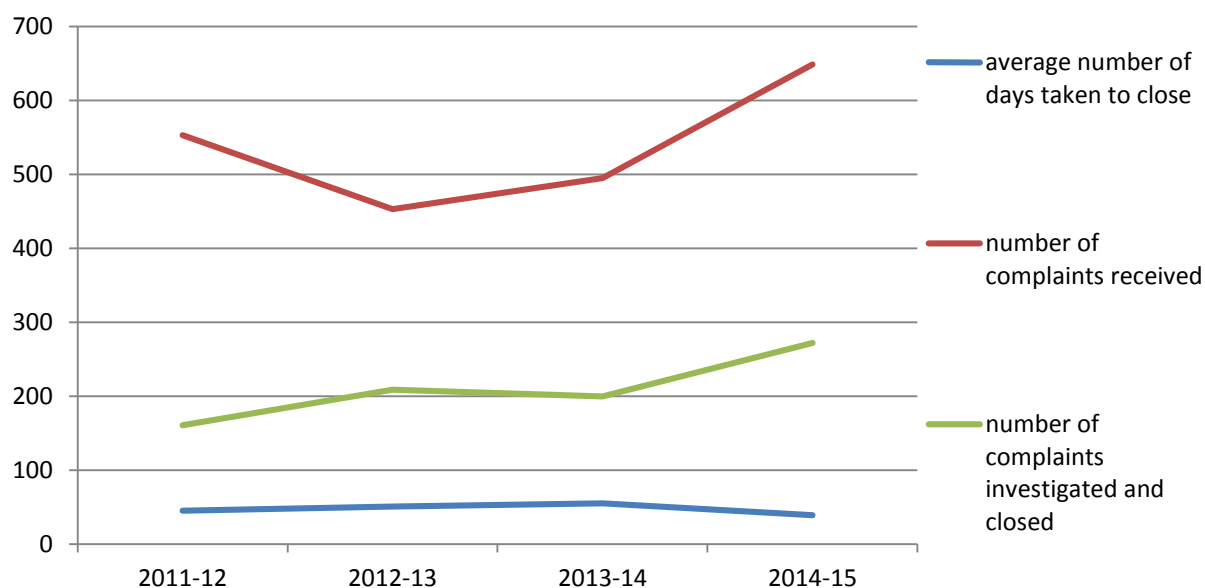
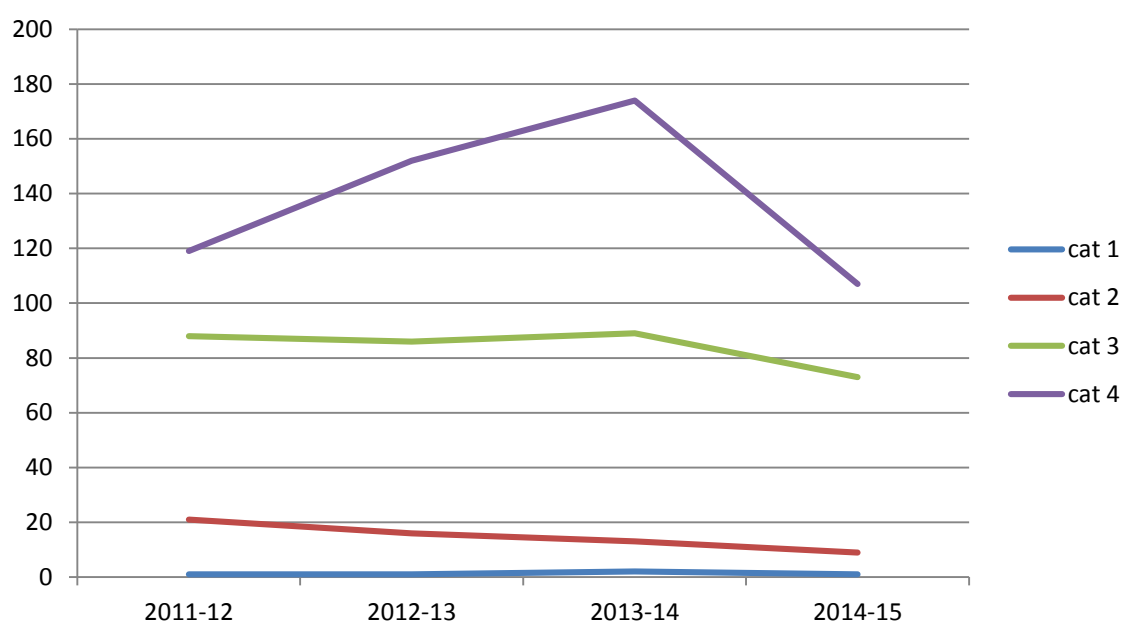


Figure 14: Complaint closure - average number of days per category¹⁹



3.8 Complaints closed at category one and two are finalised without investigation; that is, the OSO has not contacted the education provider about the complaint. This may be due to a number of reasons:

- we make a decision on the basis of the information provided to us by the student that the provider acted reasonably
- the complainant has not raised the matter through the provider’s internal complaints and appeals processes so we refer them back to that process first
- the complaint is withdrawn by the student

¹⁹ Excluding the single category 5 complaint received by the OSO during operation.

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- the student fails to provide requested information and the complaint lapses
- the complaint is transferred to another complaint handler better suited to deal with it.

3.9 In complaints closed at the category two level, although we have not contacted the provider, we may have invested considerable time and resources in analysing documents and researching the issue. Where possible we make a decision and advise the student of our reasons. We often adopt this approach in the common fee and refund complaints.

3.10 One method we adopt to resolve a complaint is to examine the written agreement, refund or cancellation policy, to decide whether we consider the provider's actions are reasonable in refusing a refund or pursuing the student for outstanding fees.

3.11 The complaints that we investigate are mostly category three.²⁰ Where multiple contacts are required with an education provider to resolve a complaint it will be escalated to category four.²¹ We investigated one category five complaint in 2011. We sent a formal report under s 19ZQ of the *Ombudsman Act 1976* to the Minister for Education in relation to a provider that refused to pay a refund to a student in the required four week period and would not respond to our investigation of one of its education agents. This was prior to the creation of the national regulators, ASQA & TEQSA. Since this time, we have used our s 35A public interest disclosure powers to report providers of concern directly to the regulators.

4. REPORTING ON TRENDS AND SYSTEMIC ISSUES

4.1 Through our complaints investigation function we identify systemic issues which affect, or have the potential to affect, large numbers of overseas students and education providers. As complaint numbers continue to increase we are committed to engaging strategically with the sector to highlight issues we identify and look for ways to address issues on a broad scale.

4.2 We published two issues papers in our first four years of operation concerning systemic issues, Overseas Students Health Cover and Written Agreements between education providers and overseas students. We have since produced a third paper concerning course progress and attendance, published in May 2015²².

²⁰ 625 of the complaints received and closed by 8 April 2015 were category 3 complaints.

²¹ 213 complaints received and closed by 8 April 2015 were category 4. We have only investigated one category 5 complaint.

²² These papers can be accessed at <http://www.oso.gov.au/publications-and-media/reports/issues-papers/>

Systemic issue - Overseas Students Health Cover

Overseas Students are required to have health insurance for the duration of their time in Australia. Many students purchase such insurance through their education provider. In 2013–14 we identified problems with some private-registered education providers failing to arrange Overseas Students Health Cover (OSHC) for students who had paid them the premium. In each case the provider had also falsely reported to DET and DIBP that they had arranged the cover. In other cases students were covered for the duration of their course but not for the duration of their stay in Australia. These problems caused the students to breach their visa conditions and left them without cover, until our office investigated the matters.

We reported the providers to the regulator. We also used the complaints to consider the administration of OSHC by education providers, DET, DIBP, the Department of Health (DH) and the five OSHC insurers more broadly. After consulting with these organisations we identified a number of areas for improvement and made the following recommendations:

- that DET consider revising regulations to include the start and end dates for the health cover as part of the information providers must enter into PRISMS.
- that DET 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.
- 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.

The OSO undertook to liaise with the Council for International Students Australia (CISA) to raise awareness amongst overseas students of their rights and responsibilities regarding OSHC, to continue to investigate complaints about OSHC not being arranged as promised by providers or their agents and to report to the regulator, any providers or agents who have received OSHC but failed to arrange appropriate cover.

In response to our recommendations and in consultation with DET and DH, DIBP developed a fact sheet emphasising provider's obligations when arranging cover for overseas students. This fact sheet was distributed to education providers. In addition, DIBP has changed the information that it provides to students to clearly advise students that they must not enter Australia before their health insurance commences.

Other steps taken by DIBP include the publication of an online blog titled '*Did you know you need to have health insurance to study in Australia?*'. DIBP advised that through cross-promotion on its social medial platforms and the Study in Australia website published by Austrade, the blog post has achieved considerable international reach.

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- 4.3 We also report on trends and systemic issues through our provider and student e-newsletters, presentations at conferences, student and provider workshops and training webinars. Additionally, we publish quarterly statistical reports that track complaints trends by issue and education sector and have published an annual report, which summarises our key activities and outcomes each year²³.
- 4.4 We have made submissions to relevant inquiries, including DET's Reform of the ESOS Framework, DIBP's review of the SVP program, the Senate's inquiry into the VET system and the Productivity Commission's inquiry into international education services. In May 2015, we made submissions to the Productivity Commission's research study into barriers to services exports and to DET's Draft National Strategy for International Education. Our submissions are publicly available on our website.
- 4.5 We continue to participate in the Commonwealth, state and territory International Education Roundtable, which brings together government agencies across Australia involved in international education. We also meet quarterly with DET, DIBP, TPS, ASQA and TEQSA to monitor and discuss systemic issues, trends and developments in the international education sector.

Reports to the regulator

- 4.6 The OSO has the power to report providers of concern to the national regulators, ASQA or TEQSA, and the state or territory schools regulators, using our public interest disclosure powers under s 35A of the Ombudsman Act 1976. This ensures serious potential breaches of the ESOS Act or National Code or welfare issues relating to under 18 year olds are reported to the relevant regulator. Once we provide this information, it is up to the regulator to decide what regulatory action, if any, it should take.
- 4.7 In the first four years of operation, the OSO made disclosures in relation to thirteen providers to ASQA under section 35A of the *Ombudsman Act 1976* for a range of reasons including:
- failure to pay a refund where a student was entitled to the refund
 - allegations that a provider created false enrolments
 - enrolling students in a superseded course
 - alleged negligence of an education agent
 - failure to arrange health insurance for a student after collecting the fee for the student's health insurance.
- 4.8 We also made a disclosure to the Victorian Registration and Qualifications Authority (the schools regulator in Victoria) regarding the welfare of an under 18 year old and to the Australian Competition and Consumer Commission regarding the actions of an education agent. We also made a disclosure to the Australian Federal Police and DIBP regarding an alleged criminal matter.

²³ Annual and quarterly reports can be accessed at <http://www.oso.gov.au/publications-and-media>

5. ENGAGING WITH STUDENTS, PROVIDERS AND OTHER STAKEHOLDERS

Helping overseas students

- 5.1 Overseas students are often unaware of their rights under the ESOS Act, National Code and the Australian Consumer Law. The availability of the OSO means students can raise their concerns somewhere independent and impartial and have their issues investigated in private for free. Even if the student does not understand the rules that apply to their circumstances, we use our knowledge of the legislative requirements and best practice complaints resolution to ensure, when we investigate a complaint, that the education provider has acted lawfully and the student has been treated fairly.
- 5.2 We publish a student e-newsletter for overseas students several times a year and work with the CISA to deliver information to international students. CISA has promoted our services on its Facebook page and distributes our student e-newsletter to its student representatives throughout Australia. We also provide training to the incoming CISA Executive Officer and speak to student representatives at the CISA national conference each year.
- 5.3 To ensure intending and former overseas students know about our services, we have been meeting with the embassies, consulates and high commissions of key student source countries to advise them of our role and how we can help overseas students from their countries. We also presented at the DET Education Counsellors Briefing in Canberra in March 2015 to advise the Education Counsellors of the OSO's role and how we can help intending and former overseas students they may come in contact with through their work in key international student source countries. We also provided content for a DET fact sheet for Education Counsellors providing further information on our role and the types of complaints we receive.

Helping education providers

- 5.4 The OSO has an educative function to promote best practice in the handling of complaints from overseas students by private registered education providers.
- 5.5 The OSO helps education providers by examining their policies, procedures and work practices, as they relate to a complaint or appeal we are investigating, and provide valuable feedback to them. This includes explaining the requirements of the ESOS Act and National Code to education providers when setting out the reasons for our decisions and why we have found that they have, or have not, complied with those requirements or their own policies and procedures.
- 5.6 The OSO also examines how the education provider has handled the student's complaint through its internal complaints and appeals process and provide constructive feedback. We work with private registered education providers to promote best practice handling of overseas students' complaints and we have published a Better Practice Complaints Handling Guide for Education Providers on our website.²⁴

²⁴ www.oso.gov.au/publications-and-media/

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- 5.7 The OSO makes recommendations and suggestions for improvements, which are targeted to specific areas such as a provider's policies and procedures. We also identify and make recommendations regarding systemic issues that go beyond the student's individual case and affect other students. This enables education providers to address issues, improve the quality of their services to international students and prevent further complaints.
- 5.8 The OSO publishes a provider newsletter which contains useful information, advice and tips on avoiding common mistakes we see providers make in particular areas. Our newsletter describes how providers can improve their policies, procedures and services by sharing the lessons we have learned from our complaints investigations. We send the provider e-newsletter to all private providers in our jurisdiction, as well as some public providers who have requested to be on our mailing list. One university distributes our provider newsletter to all the public universities, as the tips and advice are equally applicable to public providers even though they are not in our jurisdiction. Our newsletters are also published on our website.
- 5.9 The OSO also provides training to providers on a range of topics related to the complaints and systemic issues we see. We work with the peak industry bodies to deliver face-to-face provider workshops and online training webinars.²⁵ We also present at the major international education conferences²⁶ on a range of relevant topics and are regularly receive invitations to speak to education providers around Australia.

Connecting with other complaint handling and consumer protection bodies

- 5.10 As noted in the Baird Review, 'a limited number of expert complaints handling bodies could, through sharing information on complaint trends, strengthen quality assurance processes and identify areas where ESOS regulators needed to review requirements or provide additional support to providers'.
- 5.11 In 2014, the OSO held the inaugural Overseas Students Complaint Handlers Forum which was attended by state and territory ombudsmen and other bodies involved in complaint handling and policy for overseas students, such as the Fair Work Ombudsman, the Australian Human Rights Commission, Study Melbourne, the Office of the Training Advocate (South Australia), the International Education Conciliator (Western Australia), the TPS, ASQA, DIBP and DE. The purpose of the forum was to identify and discuss trends and issues as well as promoting consistency in complaints handling for overseas students. We also hold a quarterly teleconference with overseas student complaints handlers for the same purpose. A second overseas student complaint handler's forum was held in July 2015 and we will continue to lead the quarterly complaint handler's network teleconferences.

²⁵ This includes EA, ACPET, the International Student Advisors Network of Australia (ISANA), the Independent Schools Council of Queensland (ISCQ), the Association of Independent Schools of South Australia, Study NSW and the Western Australian Private Education and Training Industry Association (WAPETIA).

²⁶ This includes the Australian International Education Conference and the national conferences of EA, ACPET, ISANA and the National English Language Teaching Accreditation Scheme (NEAS).

6. NEXT STEPS

- 6.1 Complaint numbers have been increasing steadily in the last two years, with a 30% increase up to 8 April 2015. We anticipate a continued increase in complaints and external appeals to the OSO, as the international education sector continues to grow.
- 6.2 On the level of individual complaints, we have trained additional investigation officers to handle increased numbers of overseas student complaints and appeals. On the systemic level, we will continue to address the root causes of complaints through a range of means, including providing advice and training to education providers, publishing issues papers on key topics and providing information and tips through our provider and student e-newsletters.
- 6.3 By resolving individual problems and identifying systemic issues and trends, our goal is to enhance the student experience and Australia's international reputation as an education destination across all education sectors. Overall, we have observed that while we identify some instances of non-compliance with aspects of the ESOS framework, the majority of providers readily accept our recommendations to rectify problems we have identified. Additionally, our work on systemic issues has been welcomed by the sector.
- 6.4 We anticipate that there will be changes to the ESOS framework arising from the current ESOS reforms process. This will mean the legislation and standards we use to investigate complaints are likely to be revised and we will need to inform ourselves of these changes as will providers and students. The changes could also result in new complaints issues arising, which we will monitor through our investigations work.
- 6.5 DIBP has also recently announced a new Student Visa Framework, to be implemented from July 2016. It remains to be seen what impact this may have on complaints to our office, particularly provider transfer appeals, which had been increasing in line with the expansion of the SVP program. Again, we will monitor any complaints trends that may arise and report back to the sector on what we find.
- 6.6 The Australian Council for Private Education and Training (ACPET) has called for a private training ombudsman to handle complaints from both international and domestic students in the private training sector. We have indicated we could take on complaints from domestic students about private education and training providers if our jurisdiction was extended and we were given funding to do so.
- 6.7 We have also noted that our jurisdiction could be extended to allow us to investigate complaints about private education and training providers operating offshore campuses. This could include Australian private providers delivering courses in other countries.
- 6.8 Our jurisdiction could also be extended to allow us to investigate complaints about private providers from students who are studying not on a student visa but on other temporary visas such as working holiday makers and visitor visas.
- 6.9 The Senate enquiry committee report, 'The operation, regulation and funding of private vocational education and training (VET) providers in Australia' released on 15 October 2015 recommended (recommendation 16) that an Ombudsman

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focused on domestic students in the VET sector be created, and further suggests that this position be industry-funded.

- 6.10 We look forward to continuing to work with government, providers, students and other complaint handlers to continue to maintain a strong consumer protection framework for overseas students, to enhance the student experience and safeguard Australia's international education sector.

Appendix 1 – Issues received per year

* 'Year' runs from 9 April to 8 April following year

Issue	2011-2012	2012-2013	2013-2014	2014-2015	Total
Fee/refund/written agreement	212	153	159	217	740
Standard 7 Transfer between registered providers	97	83	75	147	402
Standard 11 Monitoring attendance	80	72	79	51	282
Standard 10 Monitoring course progress	38	30	50	52	170
Grades/assessment	30	25	34	34	123
Standard 13 Deferring, suspending or cancelling the students enrolment	33	28	14	26	101
Provider default	40	13	16	21	90
Standard 8 Complaints & appeals	20	15	21	31	87
Graduation Completion Certificate	21	18	25	23	87
Standard 14 Staff capability, educational resources & premises	13	26	12	21	72
Out of jurisdiction to investigate (OOJ)	10	17	16	18	61
Standard 4 Education agents	13	4	9	15	41
Standard 12 Course credit	7	8	7	11	33
Standard 2 Student engagement before enrolment	4	7	6	9	26
Bullying or harassment	3	10	4	5	22
Standard 1 Marketing information & practices	8	4	1	9	22
Academic transcript			4	12	16
Work placement/experience	3	1	3	9	16
Standards for VET accredited courses (SNRs)		3	8	4	15
Standard 9 Completion within the expected duration of study	3	4	3	2	12
Australian Qualifications Framework (AQF) standards	2	1	7		10
Overseas Student Health Cover	2	1	2	3	8
Standard 5 Younger students	1	1	4	1	7
Australian Quality Training Framework (AQTF) standards	5	1			6
Discipline	1	1	2	2	6
Standard 6 Student support services		4		2	6
Higher Education Standards Framework				2	2
FOI General Access/Other			1		1
Standard 15 Changes to registered providers ownership or management			1		1
Total	647	529	562	727	2465