



**Submission by the
Overseas Students Ombudsman**

**THE OPERATION, REGULATION AND
FUNDING OF PRIVATE VOCATIONAL
EDUCATION AND TRAINING (VET)
PROVIDERS IN AUSTRALIA**

Submission by the Commonwealth and Overseas Students Ombudsman,
Mr Colin Neave

30 March 2015

BACKGROUND

On 24 November 2014, the Senate referred the inquiry into the operation, regulation and funding of private vocational education and training (VET) providers in Australia to the Education and Employment References Committee for inquiry.

One of the terms of reference to the inquiry is the regulatory regime that private VET providers operate within. The submission by the Overseas Students Ombudsman (OSO) is intended to address the role of the OSO within this regulatory regime.

The OSO was established as a consumer protection measure following a recommendation in the Baird Review.¹The OSO has three roles:

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

Education providers enrolling overseas students must be registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS). CRICOS registered providers are obliged to comply with the *Education Services for Overseas Students Act 2000* (ESOS Act) and the National Code of Practice for Providers of Education and Training to Overseas Students 2007 (the National Code), along with statutory instruments made under the ESOS Act - collectively, the ESOS framework.

The National Code sets out requirements relating to pre-enrolment engagement of students, care for and services to students, the rights of students as consumers, the integrity of the student visa programme and the staff, educational resources and premises of providers.

The new Standards for Registered Training Organisations (RTOs) require RTO's to provide for a review by an appropriate independent party if internal processes fail to resolve a complaint by a domestic or international VET student. VET students studying in Australia on student visas with private registered providers can complain to the OSO if they have unresolved concerns about providers and overseas students and domestic students studying with public providers can complain to the appropriate State or Territory Ombudsman. Currently, domestic students of private providers do not have an Ombudsman to complain to.

At the time of preparing this submission there are 961 education providers within the OSO's jurisdiction, 369 of which list VET as their main course sector (VET providers)². The VET year-to-date enrolments for overseas students in December

¹ Stronger, simpler, smarter ESOS: *Supporting International Students: Review of the Education Services for Overseas Students (ESOS) Act 2000*, February 2010.

² PRISMS PEO export 12 March 2015

2014 totalled 149,785³, about a quarter of all year-to-date enrolments for overseas students.

COMPLAINT HANDLING ROLE

Complaints investigation is a core function of the OSO. In contrast to regulatory bodies such as Australian Skills Quality Agency (ASQA), which use information or data gathered from complaints to make decisions about regulatory priorities, the OSO investigates complaints and determines appeals with a view to recommending outcomes in individual cases. As discussed below, we also share data and observations from our complaint handling with regulators and make disclosures to regulators about matters when we consider it to be in the public interest.

Since commencing in April 2011 we have received over 2000 complaints from overseas students about private providers in all education sectors in Australia and we have investigated 863 of these complaints⁴. We have received 845 complaints about VET providers in Australia and we have investigated 459 of these complaints.

The most common issues raised in complaints by overseas students about VET providers are:

- refund and fee disputes
- refusal of a provider to allow a student to transfer to another provider
- education providers' intention to report students to the Department of Immigration and Border Protection (DIBP) for unsatisfactory attendance or course progress.

We have also received complaints by overseas students about the actions of education agents recruiting students on behalf of private registered providers. Under the ESOS Framework, education providers are required to have processes in place for monitoring their agents (brokers) and to ensure that agents have up-to-date marketing information. Providers are expected to progress complaints about their education agents through their formal complaints and appeals processes.

When we investigate complaints we examine whether providers have complied with legal requirements and their own policies and procedures. We generally do not investigate complaints unless the student has exhausted a provider's internal complaints and appeals processes first.

Where a matter can be dealt with more conveniently or effectively by another statutory office-holder we are required to transfer the matter to that statutory office-holder. For this reason we transfer complaints about education quality at VET providers to the ASQA. We have transferred 59 complaints to ASQA since commencement.

Where, after investigating, we think that an education provider has contravened the law or acted unreasonably we make recommendations to resolve the matter. Where a provider has complied with legislative requirements and acted reasonably we will explain our decision to the student.

³ Department of Education International Student Data:
https://internationaleducation.gov.au/research/International-Student-Data/Documents/INTERNATIONAL%20STUDENT%20DATA/2014/2014Dec_0712.pdf

⁴ Complaints statistics are correct as of 16 March 2015

Where we find in favour of a student possible outcomes 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.

Standard 8 of the National Code requires providers to implement our recommendations. Subject to procedural fairness, if a provider does not implement a recommendation, we may report it to the appropriate regulator under section 35A of the *Ombudsman Act 1976*⁵. However, in the overwhelming majority of cases providers accept our recommendations in relation to individual complaints and undertake to implement corrective action where we have recommended this.

To date, the OSO has made disclosures in relation to 13 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.

We have also provided information to other bodies such as the Victorian Registration and Qualifications Authority (schools regulator in Victoria), DIBP, the Australian Competition and Consumer Commission and the Australian Federal Police.

REPORTING ON TRENDS AND SYSTEMIC ISSUES AND PROMOTING BEST-PRACTICE IN COMPLAINTS HANDLING

Our office has an educative function to promote best practice in the handling of overseas student complaints. We engage regularly with student, industry and government stakeholders to proactively assist providers, including VET providers, to comply with legal requirements relating to overseas students which are the most frequent cause of complaint. In particular we,

- provide a best practice complaint handling guide for education providers
- conduct webinars for providers with peak bodies, including ACPET, on a range of topics which feature in complaints to our office
- produce student and provider e-newsletters to promote awareness of best practice complaint handling and legal obligations relating to areas which feature in complaints
- present to industry and student peak bodies about our role, best practice complaint handling and other issues of concern such as agents and written agreements
- meet with industry and student peak bodies as issues arise

⁵ Section 35A provides for the Ombudsman to disclose information, or making a statement, to any person or to the public or a section of the public with respect to the performance of the functions of, or an investigation by, the Ombudsman if, in the opinion of the Ombudsman, it is in the interests of any Department, prescribed authority or person, or is otherwise in the public interest, so to disclose that information or to make that statement.

- publish issues papers on systemic issues
- make recommendations and suggestions for improvements to providers as part of our individual complaints and appeals investigations.

We also hold quarterly meetings with ASQA, Tertiary Education Quality Standards Agency (TEQSA), the Tuition Protection Service (TPS), DIBP the Department of Education (DE).

Last year we held the inaugural Overseas Students Complaint Handlers Forum 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. We are in the process of organising a second forum again this year.

By resolving individual problems and identifying systemic issues and trends the OSO's 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 non-compliance with aspects of the ESOS framework is not uncommon, the majority of providers accept recommendations to rectify problems identified by OSO. Additionally, the OSO work on systemic issues that also identify whole-of-government issues has been welcomed by the sector.