



Submission by the
Commonwealth Ombudsman

Vocational Education and Training Review

Submission by the Commonwealth Ombudsman, Michael Manthorpe PSM

25 January 2019

Introduction and summary

This submission outlines the role of the Office of the Commonwealth Ombudsman (the Office) and describes two of its specialist functions, the Overseas Student Ombudsman and the VET Student Loans Ombudsman. The submission highlights the issues that the Office has identified from complaints from students and liaison with government agencies and providers, in relation to international and domestic students participating in the vocational education and training (VET) sector, and provides suggestions for consideration as part of the Review.

Our Purpose

The purpose of the Office is to:

- provide assurance that the Australian Government entities and prescribed private sector organisations the Office oversees act with integrity and treat people fairly
- influence enduring systemic improvement in public administration in Australia and the region.

Specialist roles relating to students

The Commonwealth Ombudsman has two specialist roles relating to students. These are the Overseas Students Ombudsman and the VET Student Loans Ombudsman.

The **Overseas Students Ombudsman** (OSO) function:

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

The **VET Student Loans Ombudsman** (VSLO) function:

- investigates complaints about, makes recommendations to and reports on VET FEE-HELP and VET Student Loan providers
- provides best practice complaint-handling advice and training to providers
- reports on trends and issues identified in the VET sector.

Response to Terms of Reference

We recognise that the focus of the Review is readying Australia's VET sector to meet the requirements of Australia's future domestic workforce. Our observations from complaints we have received from domestic and international VET students highlight potential gaps in the protection framework which affect both domestic and international students.

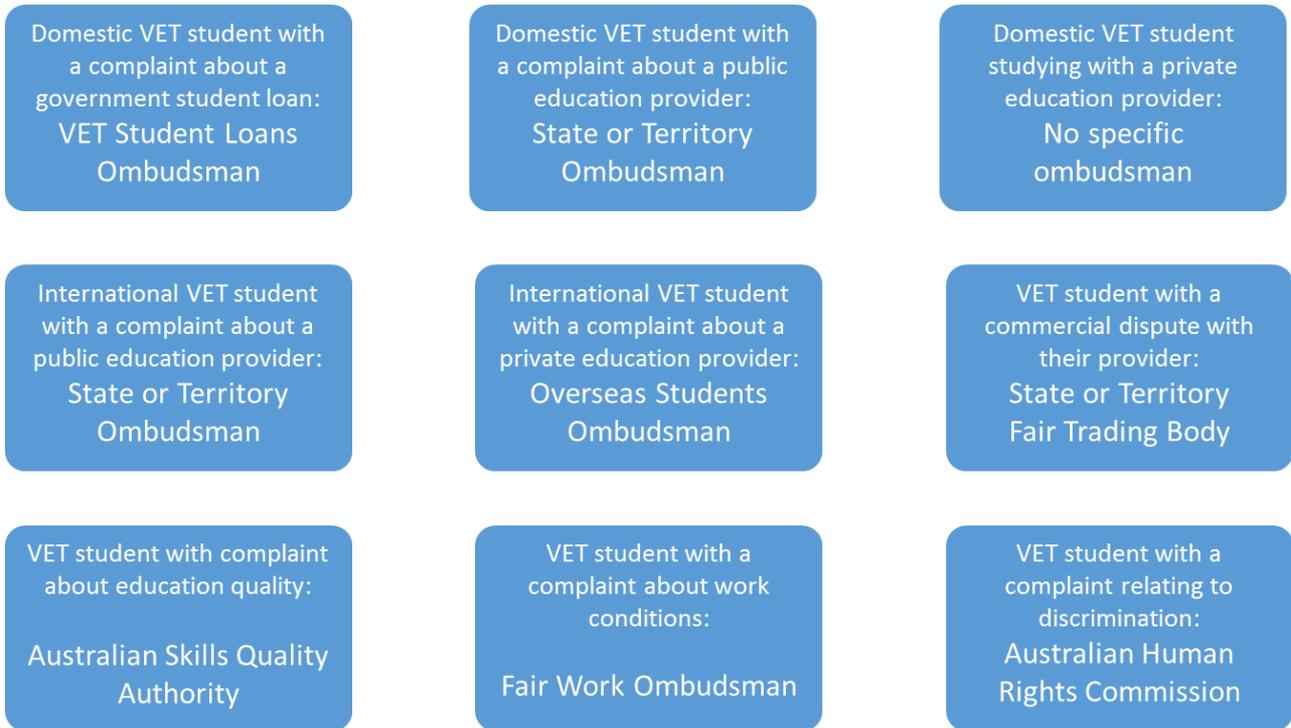
Our submission focuses on the policy and regulatory settings related to domestic and international VET students. The submission highlights policy and legislative gaps in relation to complaints made about the quality of VET courses and tuition protection for students where VET providers close or are deregistered.

Our submission also references the Office’s submission to the Review of the *National Vocational Education and Training Regulator (NVETR) Act 2011* including the benefits of collecting VET sector complaints data from providers.

Complaint-handling for VET students

Although our Office has jurisdiction over certain complaints from VET students, there are many bodies available for students to complain to depending on the issue raised and the jurisdiction of the complaint-handling body. Some examples are outlined below:

Figure 1: A sample of complaint-handling agencies available to VET students in Australia



Within this landscape, our Office handles complaints from VET students on a wide variety of issues.

Overview of Overseas Students complaints

As at 3 December 2018, 69 per cent of international students in our Office’s jurisdiction were studying in the VET sector,¹ and we had investigated nearly 1000 complaints from international VET students.

¹ “PEO report” extracted from Provider Registration and International Student Management System (PRISMS), on 3 December 2018: number of ‘studying Confirmations of Enrolment’ (CoEs) in Overseas Students Ombudsman jurisdiction by ‘main course sector’. Excludes South Australian providers as, while they are in jurisdiction, we transfer complaints about SA providers to the South Australian Training Advocate.

International students complain to our Office because they have experienced problems with their private education provider that they were not able to resolve using the provider's internal complaints and appeals process. Some of these problems include disputes over refunds, where we examine the contract between the provider and student as well as relevant legislation to determine if the student should receive a remedy.

We can also help international students who are in the process of being reported to the Department of Home Affairs for failing to meet attendance or course progress requirements. In these complaints we investigate whether the provider met their obligations to give the student appropriate warnings, support and intervention strategies.

International students also need their education provider's permission to transfer to another education provider, if that student has not yet completed at least six months of their 'principal' course. If the provider does not grant the student their permission, the student can't transfer, and we often receive complaints about those decisions. There are considerations that providers must take into account when making those decisions, and we consider whether the provider has done so appropriately.

We also receive complaints from international students about issues that are more appropriately considered by other agencies, as outlined in figure 1 above. A common issue handled by other agencies is the quality of the student's educational experience. These types of complaints are discussed in more detail below.

Overview of VET Student Loans complaints

As at 30 June 2018, 180 providers operated as approved course providers under the VET Student Loans program and 43,294 students were assisted by the program.² As at 31 December 2018, the Office had received 166 complaints relating to the VET Student Loans program. The common reasons VET Student Loans program students complain to our Office are:

- the loan amount including loan caps
- applications for VET loan assistance
- course quality and cancellation.

As at 31 December 2018, we had received 10,798 complaints about both VET FEE-HELP debts and VET Student Loans. Over 99 per cent of complaints handled by our VSLO function are about VET FEE-HELP debts.

The issues raised by complainants disputing a VET FEE-HELP debt are consistent with those identified by the Australian National Audit Office's *Administration of the VET FEE-HELP Scheme report*³ and the Department of Education and Training's (DET) *Redesigning VET FEE-HELP: Discussion Paper 2016*.⁴ These themes relate to the enrolment behavior of providers and their brokers. They include:

² [VET Student Loans Six-monthly report 1 January 2018 to 30 June 2018](#)

³ Australian National Audit Office [Administration of the VET FEE-HELP scheme](#)

⁴ DET [Redesigning VET FEE-HELP: Discussion Paper 2016](#)

- **Unknown debts**—complainants have reported that they have VET FEE-HELP debts for courses they do not recall signing up for. Typically these people have been informed of their VET FEE-HELP debt when:
 - a VET FEE-HELP debt appears on their student loan account
 - a compulsory repayment has been raised by the Australian Taxation Office (ATO) when their income reaches the compulsory repayment threshold, and/or
 - they have contacted the ATO to dispute or object to one of the above.
- **Unsolicited approaches**—complainants have reported they were enrolled in courses as a result of unsolicited approaches such as doorknocking, cold-calling, or being approached in public spaces (such as shopping centres and outside Centrelink offices).
- **Use of inducements**—complainants have reported they were offered inducements (including cash, laptops and tablet devices) by providers or their brokers to enrol in a VET FEE-HELP course.
- **Misinformation about the nature of VET FEE-HELP loan assistance**—complainants have reported that providers and their brokers did not explain that they were signing up to a loan, or were incorrectly told that they were enrolling in a ‘free course’.
- **Lack of academic capability or provider support**—complainants have reported that they were signed up to courses they did not have the academic capability to complete or the training provider offered inadequate support during their studies.

Under the *Higher Education Support Act (HESA) 2003*, there were limited remedies available for complainants with issues of unacceptable provider or broker conduct that occurred prior to 1 January 2016. We had difficulty identifying appropriate remedies for the majority of VET FEE-HELP complaints we received particularly when the provider is no longer in operation.

However, following representations from our Office, and in close consultation with the Department of Education and Training and other relevant agencies, a potential remedy for many of these complaints has been developed. In particular, we welcome the fact that in December 2018 the Parliament passed Government amendments to the HESA, effective 1 January 2019, which allow the Secretary of DET to remove VET FEE-HELP debts that were incurred inappropriately, following a recommendation from our Office.⁵ As at 31 December 2018, we had 5,340 complaints which will be considered under these redress measures.

We expect the redress measures will provide a viable option for resolution for the majority of complainants disputing a VET FEE-HELP debt. However, we expect that it will take us up to 12 months to progress the existing complaints due to the complexity of the matters being complained about, including a scarcity of available evidence for many complaint due to providers having closed.

We also expect to continue to receive more complaints that we will assess under the redress measures, in particular we anticipate a large increase in complaints over the tax period in 2019.

Our VSLO quarterly updates⁶ provide an overview of the complexity of the VET FEE-HELP complaints we handle as well as the work we have undertaken to identify resolutions for these complainants.

⁵ [VET FEE-HELP Redress Measures, Department of Education and Training](#)

⁶ [VET Student Loans Ombudsman quarterly updates](#)

Submission by the Commonwealth Ombudsman to the Review of the NVETR Act 2011

In August 2017, the Office provided a submission to the Review of the NVETR Act 2011.⁷ The submission outlined issues identified through our complaints data as they relate to student protection mechanisms.

In the submission, the Office asserted that the VET sector would benefit from sharing statistical information from providers and complaint-handling agencies concerning the number of complaints they receive, the subject or issue and the outcome.

Complaints data offers insight into student satisfaction and a broad indication of the 'health of the system'. It can also be beneficial to inform VET regulators' compliance risk modelling. Providers are not currently required to report this data and complaints are handled by various bodies, both state and national, leading to substantial gaps in our understanding of the extent of VET sector complaints.

As part of the OSO function, the Office consulted with stakeholder organisations including international students, education providers, peak bodies, policy departments and national regulators, and published a Consultation report.⁸ The report highlighted that most stakeholders agreed that there is a lack of consistent, sector-wide data about complaints and appeals from international students.

Since providing a submission to the Review of the NVETR Act 2011, the Office has convened a working group to identify and share data amongst state and federal agencies who handle complaints from international students. As a result, most state and territory Ombudsman offices have made changes to their data collection systems to enable complaints from international students to be identified and reported separately. We are continuing to work towards producing a national report on international student complaints.

The Office submits that the Review considers the collection and sharing of data across a dispersed sector, including collecting, reporting and sharing provider-level complaints data to allow early intervention to address potential systemic issues.

Handling complaints about the quality of courses in the VET sector

Complaints about quality

Complaints made to the Office from students about the quality of their educational experience typically concern the teaching, resources, or facilities provided as part of their course. As the Office is not the designated authority to assess the quality of the delivered course, we do not consider complaints concerning quality issues for domestic or international students. Instead, it is our practice to transfer these complaints (with the student's permission) to the VET regulator, the Australian Skills Quality Authority (ASQA).

⁷ [Submission by the Commonwealth Ombudsman, Review of the National Vocational Education and Training Regulator Act 2011](#)

⁸ [Safeguarding the student experience: external complaints avenues for international students February 2017](#).

In 2016–17 and 2017–18 the Office transferred 118 complaints from domestic and international students to ASQA, with over 90 per cent of these complaints relating to quality issues. The remaining complaints raised issues about providers not delivering the full number of course weeks, and providers not issuing transcripts, graduation certificates or certificates of completion.

The below case studies are a sample group of the most aggrieved complainants transferred to ASQA from our OSO function in that two-year period. In those cases, students were so disappointed with the quality of their course, they contacted us to seek a refund of their course fees from the provider, as they believed the provider had not delivered the contracted service.

Case study one

Ms A made a complaint to the Office about the quality of the course delivered by her provider.

Ms A complained that:

- her education provider didn't provide suitable learning facilities
- the provider changed course locations three times in two semesters
- one of the buildings didn't have chairs or a projector.

We assessed the complaint, but we were unable to assist Ms A. Under the *Ombudsman Act 1976* (s 19ZK), our Office must transfer complaints where another statutory complaint handler has the function of investigating, reviewing or enquiring into action of the kind complained of. As ASQA has a complaint-handling function in respect to complaints about quality in the VET sector, we transferred Ms A's quality complaint to ASQA.

Case study two

Ms B sought assistance from the Office in getting a refund of her pre-paid tuition fees, as she felt her provider had not delivered the course she had agreed to study.

Ms B complained that:

- she was the only person enrolled in her class
- the education provider kept cancelling her classes for weeks at a time
- when she tried to cancel her enrolment so that she could study with a different provider, the education provider asked her to pay a cancellation fee.

We assessed the complaint, but we were unable to assist Ms B with her request for a refund, as the matter raised concerns in ASQA's jurisdiction. We transferred those aspects of Ms B's complaint to ASQA under s 19ZK of the *Ombudsman Act 1976*.

Case study three

Mr C realised that the course he was enrolled in was not meeting his learning objectives:

- he was only scheduled for one hour of class per week
- he was not scheduled for any practical classes (despite studying a trade qualification).

Mr C decided to transfer to another education provider. The new education provider requested a statement from his previous provider outlining the units he had completed. Despite attempting to contact them several times, his previous provider did not respond to any of his requests. Mr C contacted our Office to request assistance with getting his statement of units completed, and obtaining a refund for the previous semester.

We assessed the complaint, and were able to assist Mr C with obtaining the statement he required. After sending the provider a request for information, they expedited the statement and provided it to Mr C. We were unable to assist Mr C with his request for a refund, as the reason supplied was dissatisfaction with quality. We transferred that aspect of Mr C's complaint to ASQA under s 19ZK of the *Ombudsman Act 1976*.

The other complaints transferred to ASQA about quality may not have specifically requested a refund, but the concerns they raised indicate that if their concerns are substantiated then they should be addressed. Various students in this group reported that they had handed over money for nothing, that they had not increased their knowledge, that promised resources were not made available, and that staff told students to go home and do assessments when students arrived for class.

Although we have arrangements in place for ASQA to acknowledge receipt of transferred complaints, we do not routinely learn the outcome of those complaints, given that it is not necessary for our complaint-handling work. In some cases, we have continued to investigate other issues raised by the complainant and learn from the complainant that ASQA has upheld their complaint about quality. In other cases, ASQA updates the Office as a courtesy that a transferred complaint has been closed, investigated, or retained as intelligence.

Remedies for students with quality concerns

Currently, there is no body or authority that can consider and assess complaints about the quality of VET courses for domestic and international students and provide individual resolution.

According to ASQA's 'Complaints about training providers' policy document, students making a complaint to ASQA can expect:

- acknowledgement of receipt of their complaint
- to be advised whether ASQA will take any action, and if so
- notification of the action taken and the outcome of that action.⁹

⁹ Accessible from: <https://www.asqa.gov.au/complaints>

In its submission to the Review of the NVETR Act 2011, ASQA states:

'It is not possible, nor desirable, for ASQA to undertake scrutiny of each complaint or application received. ASQA takes a risk-based approach to assessing these when received'.¹⁰

While students can complain to ASQA and state regulators with quality concerns, an appropriate complaint-handling mechanism is not currently available for students to have their concerns individually resolved.

There is the potential for reputational damage to the VET sector where students are unable to receive a refund for poor quality VET courses despite following the correct complaint mechanisms. As such, the Office submits that the Review consider the gap in the protection framework for students making complaints about the quality of VET courses, and identifies options to address this gap.

Tuition protection for domestic and international students

The Office has worked with DET and ASQA to identify and address issues that VET FEE-HELP students encountered with the former Tuition Assurance Scheme (TAS) arrangements. This has included collaboration between the Office, ASQA and DET to identify the most appropriate remedy for students affected by provider closures and provider misconduct.

The main issues identified with the previous TAS were the inconsistent messaging provided by the tuition assurance operators, long delays in students accessing fee or study assurance, and gaps in coverage for students with certain providers.

The Office welcomed the Australian Government's commitment to expand the Tuition Protection Service (TPS) to cover VET Student Loans approved providers and non-University Higher Education providers offering VET-FEE-HELP loans. Due to a delay in the passage of legislation, this expansion is yet to commence.

However, a gap that the Office identified with the expansion of TPS relates to the upfront fees domestic VET Student Loans program students pay outside the loan cap for their chosen course. These upfront fees are not covered by the TPS in the event of a provider closure or course cessation. The Office submits that the Review considers this issue.

International students may also find themselves financially worse off due to a gap under the existing TPS arrangements. Where ASQA decides that a registered education provider does not meet the required standards for provision of education and training, ASQA can cancel the provider's registration. Between 1 January and 20 December 2018, ASQA published 226 decisions to cancel the registration of an education provider. Education providers may also cease operating suddenly for other reasons.

As a result of regulatory activity taken against their education providers or providers' decisions to stop operating, international students sometimes find themselves unable to complete their studies with that provider. In situations like this, the TPS steps in.

¹⁰ [ASQA's submission to the Review of the NVETR Act 23.2 page 49](#)

The TPS describes itself as:

'... an initiative of the Australian Government to assist international students whose education providers are unable to fully deliver their course of study. The TPS ensures that international students are able to either:

- *complete their studies in another course or with another education provider, or*
- *receive a refund of their unspent tuition fees'.¹¹*

The limitation on the TPS to refund students their 'unspent' tuition fees has the effect of placing international students in difficult situations that leave students financially worse off, including:

- If students are not able to complete their studies with another education provider, it is often because the other education provider does not consider the student's completion of courses to date to be equivalent to those they provide, so will not give credit for previous studies. New providers may insist that students undertake and pay for additional units of study.
- If students are able to continue their studies with another education provider, the course fees charged by the new provider may be higher than the student's fees with their original provider, and students may not cope with the additional expense¹².
- The disruption to the students' studies can prolong students' need to stay in Australia, incurring additional living expenses, and causing stress over visa status.
- Students may need to move significant distances to complete their studies (especially if the closed provider was based in a regional location with a limited number of education providers) incurring moving expenses and disrupting the student's employment and support networks.
- Students who do not continue their studies and accept the refund are left without any qualification to show for their investment of time and money.

[The TPS information sheet](#) provided to international students affected by a provider closure on 10 January 2019 makes clear to international students that the TPS will not assist with any amount 'in excess of the unspent fees refund entitlement determined by the TPS'.¹³

We note that in New Zealand, the Education Export Levy (EEL) can be used to:

'refund international students or to pay transfer costs to a new high quality provider'.¹⁴

¹¹ <https://tps.gov.au/> accessed 19 December 2018

¹² Under s 50B (2) of the *Education Services for Overseas Students Act 2000*, the TPS Director may spend more than the amount of the student's refund entitlement if to do so would (a) best protect the interests of the student and (b) would not jeopardise the sustainability of the Overseas Student Tuition Fund. However, we understand that this is only approved in very limited circumstances, and information published by TPS on its website makes no indication of this possibility.

¹³ <https://tps.gov.au/StaticContent/Get/News>, *Harvest Education Technical College (HETC) - Student Meeting*, posted 10 January 2019, accessed 10 January 2019.

¹⁴ Export Education Levy Annual Report 2016-17, p18, <https://enz.govt.nz/assets/Uploads/Export-Education-Levy-Annual-Report-2016-17.pdf>

In the 2016-17 period, the EEL was used to pay for:

‘costs related to the closure... [of an education provider, including]...reassessment, English language testing, intensive remedial courses, English tuition and re-enrolment for failed papers’.¹⁵

The Office submits that the Review consider options to address the gaps in the current TPS system that financially affect international students studying VET qualifications.

Accessibility of the VET Student Loans program

As at 31 December 2018, the Office had received 166 complaints from students using the VET Student Loans program, which commenced on 1 January 2017 to replace the former VET FEE-HELP scheme. This represented one per cent of total complaints received by VSLO since it commenced on 1 July 2017.

The relatively small number of complaints received may be due to:

- stronger regulatory and policy settings
- the delay in most students reaching the income contingent repayment threshold following entry into the workforce, resulting in some people not being aware they have a student loan debt
- the smaller number of students accessing the VET Student Loans program (43,294 students as at 30 June 2018) in contrast to the VET FEE-HELP scheme (around 272,000 students in 2015)
- the length of time the VET Student Loans program has operated for (two years) compared to that of the VET FEE-HELP program (ten years including grandfathering arrangements)
- the reduction in the number of providers accessing the VET Student Loans program, compared to those accessing the VET FEE-HELP scheme (reduced from over 300 providers to fewer than 180).

A consistent theme from students complaining about the loan amount is the requirement to pay upfront fees that fall outside the loan cap for individual courses. The Office submits that the Review consider the number of students utilising the VET Student Loans program and the implications of course caps in relation to students accessing the program.

¹⁵ *ibid*, relating to closure of International Academy of New Zealand.