



Submission by the
Commonwealth Ombudsman

**REVIEW OF THE
*EDUCATION SERVICES FOR
OVERSEAS STUDENTS ACT 2000***

CONDUCTED BY
THE HON. BRUCE BAIRD
FOR THE AUSTRALIAN GOVERNMENT
DEPARTMENT OF EDUCATION, EMPLOYMENT
AND WORKPLACE RELATIONS

Prof. John McMillan
Commonwealth Ombudsman
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OVERVIEW

This preliminary submission seeks to synthesis recent comments to Senate Standing Committees made by the Commonwealth Ombudsman about issues relating to education for overseas students. It provides some detail on the work of the Commonwealth Ombudsman, as well as highlighting the need for strengthened internal and external complaints handling mechanisms for providers of education services for overseas students. We would welcome the opportunity to be involved in stakeholder discussions and future consultation processes.

The Commonwealth Ombudsman safeguards the community in its dealings with Australian Government agencies by:

- correcting administrative deficiencies through independent review of complaints about Australian Government administrative action
- fostering good public administration that is accountable, lawful, fair, transparent and responsive
- assisting people to resolve complaints about government administrative action
- developing policies and principles for accountability, and
- reviewing statutory compliance by law enforcement agencies with record keeping requirements applying to telephone interception, electronic surveillance and like powers.

INTRODUCTION

Recent reports in Australia have highlighted the difficulties that can be encountered by international students undertaking study in Australia. To some extent, these reports reflect a growth in, and maturing of, the market for the provision of education services to international students in Australia. As the market matures, so too, the knowledge of its participants grows to include an understanding of the mechanisms through which they can raise concerns about those services.

A theme common to many of the reports is that students can be confused by the number of government and non-government agencies that play a role in international education. The confusion can be compounded if the student has a query or complaint about one or other of the different agencies with which they are dealing.

Knowing to which agency they should turn can be initially daunting for a student. This problem can, again, be compounded if one or other of the agencies involved in the international education sector does not have clear or effective procedures for handling queries or complaints. A further level of complication arises if the issue confronting a student concerns more than one organisation, and there is a lack of integration between the enquiry and complaint procedures adopted by different agencies.

The agencies with which a student has to deal can include Commonwealth and State agencies responsible for education, immigration and student welfare; academic

institutions; private and not-for-profit training providers; student bodies; and community organisations.

The confusion and uncertainty that can bedevil international students has drawn attention to a lack of clarity about who is responsible for the regulatory environment relating to international students. The recent decision by State, Territory and Commonwealth Ministers to create a national regulatory framework for both tertiary education and the training and vocational education sectors will reduce the level of systemic complexity and provide an opportunity to markedly improve the handling of complaints in these sectors.

This submission highlights the need for a strong and effective complaints handling system as part of the regulatory framework for education services for overseas students. The right to complain about unsatisfactory service delivery is now widely accepted as a fundamental human right that should be a part of government and business administrative systems. Other benefits of an effective complaint system include improved transparency, more rigorous quality assurance and a well functioning regulatory structure. These benefits have been recognised as an important feature of the National Code which applies to providers of education and training services to overseas students, in Standard 8 of the Code (referred to below).

Recent events have, however, highlighted that, for at least a number of providers, the requirements laid out in this Standard either have not been met, or students were not aware that avenues for complaint and appeal existed. In either case, this means that their ability to raise concerns and have their grievances addressed was severely curtailed.

It is not clear from the currently available information whether adequate complaints mechanisms were in place for those institutions where problems initially arose, or whether there was a failure in the mechanisms which existed. Either way, there is a need for a broader assessment of compliance with the Standard.

TERTIARY EDUCATION, VET AND COMPLAINTS

The report of the *Review of Australian Higher Education*, together with recent speeches by the Hon. Julia Gillard, Minister for Education, Employment and Workplace Relations, in relation to national reform of the tertiary education sector, highlight the need for much improved and streamlined regulatory processes for the higher education sector.

The report and the Minister's speeches have both supported the need to establish a national accreditation, quality assurance and regulatory framework. In her speeches following the release of the report, the Minister announced the establishment of a new national regulatory and quality agency for higher education and the active pursuit of strong and cohesive national regulatory arrangements for the vocational education and training (VET) sector, with a focus on consistency, transparency and quality assurance.

The underlying purpose of those reforms would be to provide a quality education for students, including international students. The interests of students, individually and collectively, are at the forefront in education. Throughout the course of their study, students engage frequently with officials in government and non-government

agencies concerning their study choices and progress, and about related matters such as accommodation, income support and travel clearances.

Instances will arise from time to time in which a student wishes to query or challenge a decision that is made. It is important that there are clear procedures in place to enable a complaint to be made. The standards for complaint handling are well-defined in the Australian Standard AS ISO 10002-2006, 'Customer Satisfaction – Guidelines for Complaint Handling in Organisations', and in the Commonwealth Ombudsman *Better Practice Guide to Complaint Handling* (attached).

As those publications point out, a complaint handling system is essential to deal with errors, misunderstandings, client dissatisfaction and unexpected problems. A strong and effective complaint handling framework also ensures improved transparency in decision making, more rigorous quality assurance in agencies and a well functioning regulatory structure.

A complaint handling system must be adapted to the circumstances of a particular environment, and many different models for complaint handling are at hand. However, an essential feature of effective complaint handling is both an internal and an external avenue for complaints to be made. That is, the agency that is taking the actions that may give rise to a complaint should establish complaint procedures, and a person who is dissatisfied with how a complaint has been handled by the agency should have the option of taking their complaint to an external complaint agency.

The common model for an external complaint agency is the office of Ombudsman. The right to complain to an external Ombudsman now applies in respect of all Commonwealth, State and Territory government actions in Australia, and in major industries such as banking, postal services, telecommunications, private health insurance and energy supply.

It would be appropriate that an Ombudsman option should exist in relation to the tertiary education sector more broadly. This could be done by creating a specialist education Ombudsman, or by conferring jurisdiction upon an existing office such as the Commonwealth Ombudsman.

COMPLAINTS REQUIREMENTS ON PROVIDERS

The importance of a complaints mechanism is recognised through the *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007*, which is given effect by the *Education Services for Overseas Students Act 2000*.

The National Code (established under the Act) currently states:

Standard 8 – Complaints and appeals

Outcome of Standard 8

Registered providers' complaints and appeals processes are independent, easily and immediately accessible and inexpensive for the parties involved.

8.1 The registered provider must have an appropriate internal complaints handling and appeals process that satisfies the following requirements, or can use its existing internal complaints and appeals processes as long as it meets these requirements:

- a. a process is in place for lodging a formal complaint or appeal if the matter cannot be resolved informally, which requires a written record of the complaint or appeal to be kept
- b. each complainant or appellant has an opportunity to formally present his or her case at minimal or no cost to him or herself
- c. each party may be accompanied and assisted by a support person at any relevant meetings
- d. the complainant or appellant is given a written statement of the outcome, including details of the reasons for the outcome, and
- e. the process commences within 10 working days of the formal lodgement of the complaint or appeal and supporting information and all reasonable measures are taken to finalise the process as soon as practicable.

8.2 The registered provider must have arrangements in place for a person or body independent of and external to the registered provider to hear complaints or appeals arising from the registered provider's internal complaints and appeals process or refer students to an existing body where that body is appropriate for the complaint or appeal.

8.3 If the student is not satisfied with the result or conduct of the internal complaint handling and appeals process, the registered provider must advise the student of his or her right to access the external appeals process at minimal or no cost.

8.4 If the student chooses to access the registered provider's complaints and appeals processes as per this standard, the registered provider must maintain the student's enrolment while the complaints and appeals process is ongoing.

8.5 If the internal or any external complaint handling or appeal process results in a decision that supports the student, the registered provider must immediately implement any decision and/or corrective and preventative action required and advise the student of the outcome.

Recent events would suggest that the objectives of Standard 8 of the Code are not being met. This failing could be addressed by stating in the legislation itself that a provider shall not be registered unless the Secretary is satisfied that the provider has adopted a complaints process that complies with prescribed criteria. Section 9 of the legislation should be amended to require all providers to give the Secretary a written complaints policy and procedure (including identification of their external complaints mechanism), as part of the requirements to be met before the provider is registered. The complaints policy and procedure should be based on the principles outlined in the standards and practice guides above, be provided at no cost and the relevant documents should be translated into different languages where appropriate.

The complaints policy should be referred to in all publicity material, included on provider websites and be available to students as part of their enrolment information, as well as on request at any time. As part of their annual reporting to accreditation bodies, each provider should report on the complaints they have received under the policy throughout the year.

In relation to the current requirement for an external complaints mechanism for those situations where internal avenues do not resolve the issues, it is unclear who or what entities are currently used for this role. The exception is Western Australia, where the WA State Ombudsman provides the external complaints mechanism under the National Code, for international students enrolled in the four public universities and TAFE system in that state. Increasingly, other State Ombudsman are seeking to make their services more accessible to international students

There would be a more effective marshalling of complaints information and trend data, if a single national agency were appointed through the National Code or legislation to undertake this role, or if there was a single entity identified as the external complaints mechanism for all providers in each state and territory, with annual reporting provided to a relevant agency for collation at a national level.

A single, national agency should also have the ability to conduct 'own motion' type systemic investigations into issues of concern across the whole sector, rather than simply monitoring complaint data trends on a state-by-state basis. All of this information would comprise a valuable source of information for regulators and accreditation/registration authorities at different levels of government across Australia.

COMPLIANCE AUDIT OF COMPLAINTS MECHANISMS

Given the importance of ensuring that clear and effective complaints policies and procedures are in place in the period prior to the requirement for re-registration (December 2010) proposed under the Bill currently before the Senate, it is recommended that an immediate two-part compliance audit be undertaken in this area.

Part One of the compliance audit should assess the rigour with which Standard 8 of the National Code is being implemented, monitored and reported upon, by the relevant government agencies. This may involve assessments of the activities of Australian Government and State/Territory Government agencies and regulatory authorities.

Part Two of the compliance audit should assess the extent to which all registered education and training providers are implementing the Standard. Particular attention should be paid to the timeliness, reasons for decision and natural justice components of the Standard. The nature of external avenues for complaint, and the use of those mechanisms should also be a particular consideration of the audit. The nature and accessibility of information about complaints and the complaint-making process should also be considered.

The reports of the audit should be provided to the Minister for Education, Employment and Workplace Relations, as well as the relevant Senate Standing Committee. This process should be undertaken every three years in order to ensure ongoing compliance within the system.

The audit could be undertaken by either the Australian National Audit Office or the Commonwealth Ombudsman.

OUTLINE OF COMMONWEALTH OMBUDSMAN FUNCTIONS

Over the past 32 years, the office of the Commonwealth Ombudsman has developed extensive expertise in the handling of complaints about a wide range of issues, including the examination of administrative, tendering, program and service delivery policies, procedures, standards and implementation. Arising out of this work, we also

identify many systemic issues (which are raised with agencies) and conduct own motion investigations.

In addition to our general complaint handling role, over the past five years this office has been given by government, a growing number of additional responsibilities. We now undertake regular inspections and audits of a range of Australian Government facilities and programs, conduct regular case reviews, produce and publish specific reports for Ministers (some of which are tabled in the Commonwealth Parliament) and embark upon a range of community outreach and engagement activities. We also produce and publish reports on our complaints and inspections activities in key areas.

The jurisdiction of the Ombudsman has been extended to cover a range of non-government entities, including service providers contracted to government, and a number of private sector postal providers.

The Ombudsman's office pays special attention to complaint handling in agencies that fall within our jurisdiction. We have undertaken a number of own motion investigations into complaint handling in other agencies, for example, in the Australian Taxation Office, the Migration Agents Registration Authority, the Job Network, and airports. We have published a number of guides to effective complaint handling – including the *Better Practice Guide to Complaint Handling*, *Complaint Handling: Outsourcing* (Fact Sheet No 6) and *Complaint Handling: Multiple Agencies* (Fact Sheet No 7). An example of a specialist role that we discharge, that could be adapted to the tertiary education sector, is to prepare an annual report for the Parliament on complaint handling by the Australian Federal Police, following a periodic audit of the work of the Professional Standards Division of the AFP.

As a statutory agency with a continuing function, the Ombudsman's office is able to follow up with agencies on the implementation of our recommendations. Unlike more temporary arrangements, such as Boards of Inquiry or Royal Commissions, which have a specific, time-limited period of operation, we have a broad ranging and ongoing purview, which allows for both follow up and reinvestigation.

The office also has an existing national office network, with offices in all State and Territory capital cities. This existing network means that it is cost-efficient for the office to take on new functions. The national structure means that we are well placed to work with other government and non-government organisations throughout Australia.

This experience could be applied to creating a rigorous national complaints framework for the higher education sectors, perhaps through the creation of a specialist Tertiary Education Ombudsman function. This approach has been already been successfully applied in other areas. Specialist functions discharged by the office include those of Taxation Ombudsman, Immigration Ombudsman, Defence Force Ombudsman, Law Enforcement Ombudsman and Postal Industry Ombudsman.

THE OMBUDSMAN AND INTERNATIONAL STUDENTS

Of specific relevance to the welfare of international students, a new tertiary education ombudsman function could be successfully combined with our Immigration Ombudsman and compliance auditing roles, to address a range of systemic failures across the international student sector.

Own Motion Investigations

In addition to our regular reports to the Commonwealth Parliament on immigration matters, we have used our existing powers over the past few years to conduct a range of own motion investigations across a range of agencies operating in the international services area, including:

- Complaint Handling in Australian Airports (AFP, DIAC, Australian Customs Service, AQIS and Office of Transport Safety, May 2007)
- Migration Agents Registration Authority Complaints Handling Processes, (June 2007)
- Damage Caused to Inbound International Postal Items (Australia Post, AQIS and ACS, April 2008)
- Use of Interpreters (AFP, Centrelink, the Department of Employment, Education and Workplace Relations and DIAC, March 2009)

Compliance Audits

The Ombudsman also has the statutory function of overseeing and reporting in relation to records or activities in a range of sensitive areas. In relation to Commonwealth law enforcement, the Ombudsman:

- inspects records relating to telecommunications interception access to stored communications¹
- inspects records relating to the use of surveillance devices²
- inspects records relating to controlled operations³.

These inspections help to ensure that agencies with powers that, by their nature, are intrusive and which would not be known to the person subject to them, use those powers lawfully and for proper purposes. The Ombudsman's inspections often lead to suggestions being made to ensure that agencies act appropriately.

The Ombudsman reviews instances of longer-term immigration detention and provides assessments to the Immigration Minister which are used to determine whether continued detention is appropriate. This is an important protection for people who may be less able to access other mechanisms for review and it helps DIAC to ensure that it does not hold people for longer than is necessary or in circumstances that may create an unnecessary burden.

In addition, we have recently released our first compliance audit of AQIS' Compliance and Investigations Unit, which arose out of a Senate Standing Committee Inquiry into the Citrus Canker Outbreak a number of years ago.

Possible Functions for an Ombudsman in the International Student Sector

On the basis of our existing expertise, we could provide the following services within the international students sector:

- Receipt and investigation of complaints about government and non-government service providers;

¹ *Telecommunications (Interception and Access) Act 1979*

² *Surveillance Devices Act 2004*

³ *Crimes Act 1914*

- Receipt and investigation of complaints about government service delivery and regulatory agencies
- Compliance audits of the exercise of regulatory and investigation functions by government agencies
- Education, advice and training to service providers and regulatory agencies on best practice complaints handling
- Agency specific and cross-agency own motion investigations into areas of complaint or where systemic problems begin to arise.

The exercise of these functions across all relevant components of the international student sector would be dependent on the development of relevant legislation and provision of additional budget funding.