



Submission by the Commonwealth Ombudsman

INQUIRY INTO THE WELFARE OF INTERNATIONAL STUDENTS

**CONDUCTED BY THE SENATE STANDING
COMMITTEE ON EDUCATION, EMPLOYMENT AND
WORKPLACE RELATIONS**

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INTRODUCTION AND SUMMARY

Recent reports in Australia have highlighted the difficulties that can be encountered by international students undertaking study in Australia. 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 discusses the need for a strong and effective complaints handling system as part of the framework for international education. 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. This submission also notes the role that the Commonwealth Ombudsman could play in dealing with complaints, based on over 32 years of operation.

BACKGROUND

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.

TERTIARY EDUCATION 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 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, is 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. This could be done by creating a specialist education Ombudsman, or by conferring jurisdiction upon an existing office such as the Commonwealth Ombudsman. As an illustration of the options, the remainder of this submission will describe the various roles of the Commonwealth Ombudsman and how these can play a role in relation to tertiary education complaints.

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 oversighting 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.

¹ *Telecommunications (Interception and Access) Act 1979*

² *Surveillance Devices Act 2004*

³ *Crimes Act 1914*

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;
- 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.