

## January 2020

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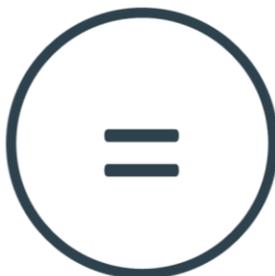
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Quarterly update for July–September 2019 is now available

You can download a copy of the latest [quarterly update](#) from our website.



### Equality vs. Equity in complaint handling



At the Office of the Commonwealth Ombudsman (the Office) we strive to be impartial and assess complaints consistently, based on the evidence at hand. Sometimes to be able to provide this service a complainant may have special circumstances we must consider in order to assess their complaint fairly.

For example, a complainant may have a disability that prevents them from speaking on the phone or using the internet; or they may not be fluent in English and may require a translator; or they may be experiencing poor health or homelessness. In these instances, it is important that we put in place measures that assist us and the complainant in ensuring we get accurate, timely information, and that the complainant feels supported to provide this information to us. This might involve us providing information in large print or in a file that a vision-impaired complainant can read using special software; or making an appointment with the complainant during which they can have a support person, carer or translator present.

Students from overseas can be more vulnerable than other complainants, and this can be for a number of reasons. For example, they may be afraid that they will suffer negative consequences as a result of making a complaint, or they may have low confidence in their English language skills.

For these students, providers can put in place a range of supportive elements such as:

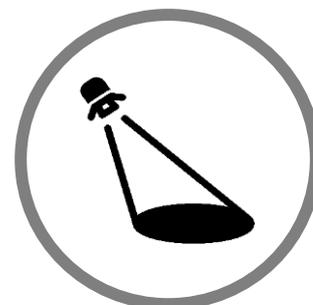
- ensuring that your complaint-related fact sheets, policies and procedures are in plain English
- providing information about your complaints process on several occasions and through different mechanisms, such as, during orientation, in the classroom, on your website and on posters visible across campus, and
- allowing complaints to be made in a range of different ways, such as by phone, online, in person or in a paper form.

This information could include making students aware of the opportunity for them to bring a support person to meetings about their complaint. Remaining alert to the needs of complainants works to provide the best possible level of service, and gives providers the opportunity to respond to student needs before problems escalate.

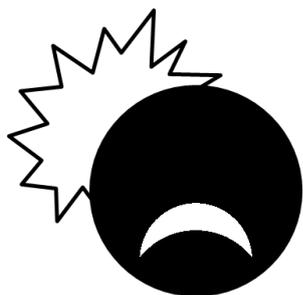
### Spotlight on unreasonable complainant conduct

Most complaints are resolved with respectful communication between all parties, but in a small number of cases complainants can exhibit unreasonable behaviour. This can include a range of characteristics including:

- excessive volume of calls or correspondence
- demands to speak to a manager
- lack of cooperation
- disrespectful language including swearing and shouting
- rude or aggressive conduct
- unrealistic demands
- in extreme cases, physical violence.



This can be stressful for those dealing with the complainant, however there are strategies that can be used to address these behaviours and still resolve the complaint.



It is important to keep in mind in these cases that it is the complainant's behaviour that is unreasonable, not the complainant themselves. Their behaviour may be a response to their strong feelings about their case, such as feeling as though they are being dismissed or not taken seriously, or that the process is putting them at a disadvantage, or there is bias involved. It is critical to continue to treat the complaint impartially and on the evidence, regardless of the complainant's behaviour or conduct during the process.

This does not mean that the behaviour needs to be accepted. Some strategies, such as implementing service limits, may be an appropriate way to manage a complainant's behaviour. This can include, where appropriate, telling the complainant that you will only speak to them by telephone, or you will only communicate by email. You may also ask the complainant to summarise lengthy correspondence and include clarification of its relevance. The case study below outlines how we recently responded to an unreasonable complainant.

The Commonwealth Ombudsman has a better practice guide to managing unreasonable complainant conduct, which you can find on our website [here](#).

#### **Case study—Responding to unreasonable complainant conduct**

The Office received a complaint from Jared\*—an international student studying at an Australian education provider. Jared's complaint related to his provider's refusal to allow him to re-sit some exams that he had missed due to health reasons. While the provider had agreed to defer some of these exams, Jared had not attended these deferred exams. The provider had a policy in place not to defer exams more than once, so Jared was not allowed to sit these exams.

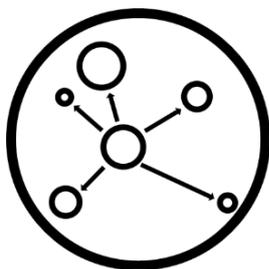
While Jared's original complaint related to these missed exams, as time went on Jared sought to add further aspects to his complaint, such as that he had a disability that had not been taken into account, that he had been unwell and this had not been taken into account, and that he had been denied access to the disability support person at the provider. The longer the complaint process continued, the more elements of unreasonable complainant conduct surfaced, including:

- pursuing the complaint for an extended period of time
- persistent and excessive attempts to contact those he felt should assist him
- producing large volumes of supporting material
- an emotionally charged belief of being unjustly treated and seeking to restore his rights
- a multiplying number of grievances against an increasing number of parties
- in written communications, undue grammatical emphasis and underlining
- substance of the complaint repeated in several different ways
- extensive use of 'legalese'.

In managing Jared's behaviour, our Office and the provider adopted strategies to mitigate the unreasonable use of time and resources. These included limiting avenues of communication to email only, ensuring information was provided on the process that would be followed, responding clearly about the reasons for decisions made, acknowledging all information provided; and in our case, being clear that we considered the matter closed unless Jared provided new information that would warrant a new investigation. Using these strategies made the process more manageable, and provided a way to control the amount of resources focused on this particular case.

\*Identifying information changed for privacy purposes.

## Outreach and engagement



### CISA conference, July 2019

In July 2019 we gave a presentation at the Council of International Students (CISA) conference in Perth. The presentation looked at 'Things you can do if studying in Australia isn't working out the way you imagined'. This presentation described the best ways to make a complaint and provided the audience with information on the role of the Ombudsman.

### SYMPLIED, September 2019

We also gave a presentation at the Symposium on Leading Education Recruitment (SYMPLIED) in September 2019. This presentation focused on 'How to complain about an education provider's decisions or actions'. Our presentation for education agents described the role and functions of the Ombudsman in providing services to overseas students wishing to complain about their providers.

### CISA Executive Induction, September 2019

The Office of the Ombudsman gave an induction in September 2019 for the new executive of CISA, describing the grievance process for complaints about education providers. This induction went into some detail about the responsibilities of providers under a range of circumstances, including when a complaint has been made to the Ombudsman. We also informed CISA of ways they can assist students in making complaints.

## External complaint-handling for international students in South Australia

Until 31 October 2019, external complaints and appeals from international students in South Australia were handled by the Office of the South Australian Training Advocate (the Training Advocate). The Training Advocate has announced that from 1 November 2019, their office no longer performs this function.

The Training Advocate will continue to provide assistance to domestic and international students, including advocacy, and assistance with preparation of internal complaints and appeals.

External complaints and appeals from international students may be directed as follows:

- a) for public schools, TAFEs or Universities: the South Australian Ombudsman
- b) for private schools, ELICOS, VET or Higher Education providers: the Commonwealth Ombudsman (Overseas Students Ombudsman).

This means that the Commonwealth Ombudsman can now take complaints from international students who have problems with a private education provider in South Australia. If you are South Australian private education provider, please drop us an email at [overseas.students@ombudsman.gov.au](mailto:overseas.students@ombudsman.gov.au) to introduce yourselves and line up a meeting.



### What would you like to know?

We are here to help you, and we hope our newsletter is useful for your organisation. Please let us know if there is anything you would like to learn more about, such as the role of the Ombudsman, or perhaps how to better manage complaints. Or is there an area of the National Code or ESOS Act you think our complaint experience may shed light on? Please write to us at [overseas.students@ombudsman.gov.au](mailto:overseas.students@ombudsman.gov.au) and let us know your questions.

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More information is available at [ombudsman.gov.au](http://ombudsman.gov.au).

Please note: This document is intended as a guide only. For this reason, the information should not be relied on as legal advice or regarded as a substitute for legal advice in individual cases. To the maximum extent permitted by the law, the Commonwealth Ombudsman is not liable to you for any loss or damage suffered as a result of reliance on this document. For the most up-to-date versions of cited Acts, please refer to the [Federal Register of Legislation](#).