

**Submission by the  
Commonwealth Ombudsman**

**INQUIRY INTO THE  
*EDUCATION SERVICES FOR  
OVERSEAS STUDENTS LEGISLATION  
AMENDMENT BILL 2010*  
(PROVISIONS)**

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

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## INTRODUCTION AND SUMMARY

This submission addresses the proposal to amend the *Ombudsman Act 1976* to extend the jurisdiction of the Commonwealth Ombudsman to include complaints from overseas students about private registered education providers in Australia.

This is our second submission to the Senate Standing Committee on Education, Employment and Workplace Relations in relation to the *Education Services for Overseas Students Legislation Amendment Bill 2010* (the ESOS Bill 2010). Our first submission was dated July 2010. We note that the ESOS Bill 2010 was re-referred to the Standing Committee on 28 October 2010 for inquiry and report. This submission is substantially the same as our first submission, but with additional points in relation to the timing for implementation and the limits of the proposed jurisdiction for the Overseas Students Ombudsman.

The international education sector in Australia comprises public education institutions, such as universities and Technical and Further Education (TAFE) colleges, as well as private education and training institutions such as business colleges and some English language providers. Under the Code associated with their registration, all education and training providers are required to provide overseas students with access to an independent, external complaints body if they are not satisfied with the outcome of the provider's internal complaints process.

Overseas students enrolled with public education providers can complain to the relevant state or territory ombudsman, or in the case of the Australian National University, the Commonwealth Ombudsman, as the external, independent complaints body. Overseas students enrolled with private registered providers can complain to state and territory education departments and state and territory statutory authorities responsible for registering and accrediting education providers. However, South Australia is the only state providing access to a distinct complaints handling body, the Office of the Training Advocate, which is independent of the registration and accreditation authority for private registered providers.

The Commonwealth Ombudsman has relevant existing jurisdiction in relation to the Australian National University, the Department of Education, Employment and Workplace Relations (DEEWR) and public education providers in the Australian Capital Territory (ACT).

This submission relates to the proposal for the Commonwealth Ombudsman's jurisdiction to be extended to include all private registered providers in Australia, which are not already covered by a statutorily independent, external complaints body. This is to ensure that there is adequate consumer protection for all overseas students studying with private registered providers in Australia.

## COMMONWEALTH OMBUDSMAN 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, and

- developing policies and principles for accountability.

The Commonwealth Ombudsman has existing jurisdiction to investigate complaints from overseas students about DEEWR's administration of the *Education Services for Overseas Student Act 2000* (ESOS Act 2000) and about the Australian National University. As the ACT Ombudsman, the Commonwealth Ombudsman's office also investigates complaints about ACT public education providers, including the University of Canberra and the Canberra Institute of Technology.

## CURRENT COMPLAINTS HANDLING REQUIREMENTS

A strong and effective complaints handling system is an essential part of the regulatory framework for education services for overseas students. The benefits of an effective complaint system include improved transparency, more rigorous quality assurance and a well functioning regulatory structure. An effective complaint system also instils confidence in the fairness and quality of Australia's education system, protecting Australia's reputation as a world leader in international education services.

Circumstances will arise from time to time in which students wish to query or challenge decisions and actions made by education providers. Students may wish to complain if they believe that they have been treated unfairly or unreasonably by education providers. It is important that there are clear procedures in place at the provider level to enable a complaint to be made and investigated appropriately.

The standards for complaint handling are well defined in Commonwealth Ombudsman's *Better Practice Guide to Complaint Handling* (attached) and a variety of commercially available documents, such as the AS ISO 10002-2006 *Customer Satisfaction – Guidelines for Complaint Handling in Organisations*. As those publications point out, a complaint handling system is essential to deal with errors, misunderstandings, client dissatisfaction and unexpected problems.

An important feature of effective complaint handling is both an internal and an external avenue to which complaints can be made. An overseas student who is dissatisfied with the way their complaint has been handled by their education provider should have the option of taking their complaint to a statutorily independent external body.

Indeed, education providers are required to have both an internal and an external complaints mechanism in place under the *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007*.

The National Code provides a set of fifteen nationally consistent standards for education providers to meet in delivering courses to overseas students. The National Code is given effect by the *Education Services for Overseas Student Act 2000*. Standard 8 covers complaints and appeals and requires education providers to 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 to refer students to an existing body, where that body is appropriate for the complaint or appeal.

Under the Shared Responsibility Framework, which sets out the respective roles of the Australian Government and designated state and territory authorities in administering the ESOS legislative arrangements, DEEWR has a role in investigating complaints under the ESOS Act 2000 and the National Code (standards 3, 4, 5, 7, 8, 9, 10, 11 and 13). Designated authorities, which includes state and territory statutory

authorities responsible for registering and accrediting providers and state / territory education departments, also investigate complaints regarding the National Code (standards 1, 2, 6, 8, 12, 14 and 15).

This office also notes that the Australian Council for Private Education and Training (ACPET) provides an external complaints handling mechanism for its members to meet standard 8 of the National Code.

We expect that the creation of the Overseas Students Ombudsman will vary the shared arrangements in relation to the handling of complaints from overseas students in relation to private registered providers.

## **ADDRESSING THE GAP IN ACCESS TO AN EXTERNAL INDEPENDENT COMPLAINTS BODY**

The review of the *Education Services for Overseas Students Act 2000*, dated February 2010, titled *Stronger, simpler, smarter ESOS: supporting international students* (the ESOS Review) conducted by the Hon. Bruce Baird AM noted concerns about inadequate complaints and dispute handling services for overseas students. More than half the submissions received by the review commented on the issue of complaint handling, with the vast majority supporting measures to strengthen and streamline the complaints process for overseas students.

The ESOS Review considered the recommendation made by the *Senate Inquiry into the Welfare of International Students* in November 2009 to extend the jurisdiction of the Commonwealth Ombudsman to cover the international education sector. The ESOS Review report agreed that international students should have access to the highest standard of complaint handling and that better use could be made of the current statutorily independent complaints handling bodies.

Currently, public education providers come under the jurisdiction of the relevant state or territory ombudsman. In South Australia, the South Australian Training Advocate deals with complaints from overseas students about both public and private education providers. The South Australian Training Advocate is independent of the registration and accreditation of private registered providers and the courses they offer. However, in other states and territories, overseas students of private education providers lack access to a statutorily independent external body, such as an ombudsman.

The ESOS Review recommended that the Commonwealth Ombudsman's jurisdiction be extended to cover all education providers not already within the remit of other statutorily independent complaints bodies. Amending the *Ombudsman Act 1976* to extend the Commonwealth Ombudsman's jurisdiction to include private registered providers would ensure fair and consistent access to external complaints mechanisms for all overseas students. The system will have the benefit of a complaints handling body which is not only independent of the private registered provider, but the state and territory designated authority as well. It will strengthen consumer protection for overseas students and ensure they have free access to having their complaint dealt with by the Commonwealth Ombudsman in a consistent and quality-assured manner.

As noted in the Explanatory Memorandum to the ESOS Bill 2010, under proposed section 19ZK(2) the Overseas Students Ombudsman must:

*transfer a complaint where the OSO [Overseas Students Ombudsman] forms the view that a statutory complaint handler has the function of investigating, reviewing or enquiring into the action complained about. An example of the kind of statutory complaint handler to which it is envisaged a complaint must be transferred is the South Australian Training Advocate... Subject to its inclusion in the regulations, a complaint that could be investigated by the South Australian Training Advocate would not be investigated by the OSO.*

We note that the jurisdiction of other statutory complaint handling bodies will be clarified through prescription under the regulations, as anticipated in s19ZK(5). We welcome this further clarification, as state bodies responsible for registering and accrediting education providers have been offering complaint handling services to students. While not referred to in the Explanatory Memorandum, for example, the role of the Victorian Registration and Qualifications Authority (VRQA) has recently been expanded through state legislation. The *Education and Training Reform Amendment (Skills) Act 2010*, among other amendments, widens the functions of the VRQA, and makes provision for students to complain to the VRQA about an alleged contravention of the legislation, regulations or relevant standards by a Registered Training Organisation (RTO).

Beyond this compulsion to transfer complaints in certain circumstances, as noted in the Explanatory Memorandum, under proposed s19ZK(3) the Overseas Students Ombudsman will have discretion to:

*transfer a complaint to another statutory office-holder if the OSO forms the view that the complaint could be more conveniently or effectively be dealt with by the other statutory office-holder. The discretion can be exercised before or after the OSO has started investigating the complaint. Two examples of a statutory office-holder to which it is envisaged a complaint may be transferred is the Office of the Privacy Commissioner and the Fair Work Ombudsman.*

## **ASSISTING PROVIDERS DEVELOP BEST PRACTICE COMPLAINTS MECHANISMS**

The Commonwealth Ombudsman would also have a role in assisting private registered providers to develop and improve their own internal complaints handling mechanisms in line with best practice. Again, this would assist private education providers to meet their obligations under the National Code. It would also benefit students by helping education providers to resolve complaints more quickly and to provide better explanations for remedies or outcomes provided.

## **STRENGTHENING AUSTRALIA'S INTERNATIONAL EDUCATION SECTOR**

Drawing on an evidence base of complaints received and investigated, the Commonwealth Ombudsman would be well positioned to identify problems, systemic issues and emerging trends. The Ombudsman may initiate broader investigations into systemic issues to highlight problems and recommend remedial action to further strengthen Australia's international education sector.

Under the proposed s19ZS(5), annual reports by the Overseas Students Ombudsman may detail observations regarding any trends in complaints, or any broader issues that arise from investigations. Annual reports may also include the details of recommendations made to private registered providers. By sharing such information, the Commonwealth Ombudsman may alert regulators and relevant stakeholders to areas requiring action or review to protect overseas students' rights and Australia's reputation as an exporter of international education services.

## **TIMING**

This office is mindful that the Senate Standing Committee on Education, Employment and Workplace Relations is due to report on 22 November 2010, and that there will be three remaining Parliamentary sitting days in 2010. The Bill sets the commencement date for the Overseas Students Ombudsman function to the later of:

- (a) the day after this Act receives royal Assent; and
- (b) 1 January 2011.

If the Bill is not passed in the Spring sittings, the Ombudsman's preference is that the alternative commencement dates be amended in the Bill to allow for commencement one month after Royal Ascent, or 1 May 2011, whichever is the earlier. This would enable the office to communicate its role with certainty to the diverse and dynamic group of potential complainants, with providers and other stakeholders.

## **CONCLUDING COMMENTS**

This Commonwealth Ombudsman has been extensively involved in the discussions regarding the strengthening of Australia's overseas students sector and supports and welcomes the proposed new role for the Overseas Students Ombudsman. The proposed amendments to the *Ombudsman Act 1976* contained in the *Education Services for Overseas Students Legislation Amendment Bill 2010* clearly sets out the establishment, functions, powers and duties of the Overseas Students Ombudsman.

The proposed new function, as set out in s19ZJ, means that the Overseas Students Ombudsman will be authorised to:

- investigate action taken by a private registered provider in connection with an overseas student, an intending overseas student, or an accepted student, within the meaning of the Overseas Student Act
- give private registered providers advice and training about the best practice for the handling of complaints made by overseas students
- as authorised, investigate action in respect of which a complaint has been made
- on his or her own initiative investigate action that he or she is authorised to investigate.

The Overseas Students Ombudsman is given discretion not to investigate certain complaints in the proposed s19ZL, and this is consistent with the discretion not to investigate complaints made to the Commonwealth Ombudsman.

The proposed powers of the Overseas Students Ombudsman are consistent with the powers of the Commonwealth Ombudsman.

Proposed s19ZS also includes specific requirements for annual reporting by the Overseas Students Ombudsman, so that outcomes achieved by the office may be recorded publicly, and the Ombudsman be held to account.