



**Submission by the
Commonwealth Ombudsman**

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

Submission by the Acting Commonwealth Ombudsman, Mr Ron Brent

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INTRODUCTION AND SUMMARY

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

The international education sector comprises public education institutions, such as universities and Technical and Further Education (TAFE) colleges, as well as private institutions such as business colleges and some English language providers. All education 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 as the external, independent complaints body. However, currently only South Australia and Victoria have complaints bodies with jurisdiction over private education providers.

The Commonwealth Ombudsman has relevant existing jurisdiction in relation to 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 education 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 education 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*. As the ACT Ombudsman, the Commonwealth Ombudsman's office also investigates complaints about ACT public education providers, including the Australian National University, the University of Canberra and the Canberra Institute of Technology.

CURRENT COMPLAINTS HANDLING REQUIREMENTS

A strong and effective complaints handling system is an important part of the regulatory framework for education services for overseas students. 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.

Instances will arise from time to time in which students wish to query or challenge decisions and actions made by education providers, and 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 the AS ISO 10002-2006 *Customer Satisfaction – Guidelines for Complaint Handling in Organisations* and in the Commonwealth Ombudsman's *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.

An essential 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 eight 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.

The proposal to extend the Commonwealth Ombudsman's jurisdiction to cover private education providers not already covered by a statutorily independent, external complaints body will enable these education providers to meet their obligations under the National Code. It will also 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.

ADDRESSING THE GAP IN ACCESS TO AN EXTERNAL INDEPENDENT COMPLAINTS BODY

The review of the *Education Services for Overseas Students (ESOS) 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 Hon Mr Baird 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. In Victoria, the Victorian Registration and Quality Authority (VRQA) deals with some types of complaints from overseas students, such as the quality of education or training. The VRQA currently refers other types of complaints about course progress, fees and provider transfers to DEEWR.¹ Under the proposed amendments, these complaints would come within the Commonwealth Ombudsman's extended jurisdiction.

However, currently 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 education providers would ensure fair and consistent access to external complaints mechanisms for all overseas students. It would also assist private education providers to meet their existing obligations under the National Code to give their students access to an independent, external complaints mechanism to have their complaints heard and dealt with by an independent, external body in a consistent and quality-assured manner.

HELPING PROVIDERS DEVELOP BEST PRACTICE COMPLAINTS MECHANISMS

The Commonwealth Ombudsman would also have a role in assisting private education 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

¹ See www.vrqa.vic.gov.au/complaints/default.htm for more details on the complaints investigation jurisdiction of the VRQA.

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.

CONCLUDING COMMENTS

This office 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 proposed s19ZK means that the Overseas Student Ombudsman will transfer complaints received to other statutory complaint handlers or statutory office-holders if the complaints received fall within their jurisdiction to investigate. In addition, if the Overseas Students Ombudsman considers that a complaint may be more conveniently or more effectively dealt with by a statutory office holder, s19ZK provides that he or she may decide not to investigate and must transfer the complaint accordingly.

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.