

Personal Submission to *Education Services for Overseas Students Legislation Amendment Bill 2010 (Provisions)* Inquiry

John Blahusiak

I make this submission in a personal capacity, but note that my place of employment is Edith Cowan University, where part of my role includes administration of ECU's Student Complaints Policy. The views expressed in this submission should be read as my own and not those of the University.

I direct my comments to the proposed provisions of the Education Services for Overseas Students Legislation Amendment Bill 2010 ("the ESOS Bill") Schedule 2 – The Overseas Students Ombudsman.

I am supportive of measures that would improve the experience of overseas students studying in Australia (including measures to increase access to and the effectiveness of internal/external complaint mechanisms). The explanatory memorandum to the ESOS Bill notes that

Registered providers are currently required 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 complaint and appeals process or refer students to an existing body where that body is appropriate for the complaint or appeal.

Currently many of the public registered providers are constituted as statutory authorities or similar bodies under State or Territory legislation. Accordingly these types of bodies are captured by the jurisdiction of the relevant State or Territory Ombudsman or bodies under State or Territory legislation or bodies such as the South Australian Training Advocate. This available jurisdiction enables the students of these registered providers to direct their complaint to the particular State Ombudsman for review of investigation.

However, students of private registered providers, while they must be provided access to an external complaints body, do not have recourse to a statutorily independent external body, such as an ombudsman, competent to hear and investigate student complaints in a consistent and quality-assured manner. The extension of the jurisdiction of the Commonwealth Ombudsman will address this gap in access to a statutorily independent external complaints body.

It would seem to me the "extension of the jurisdiction of the Commonwealth Ombudsman will address this gap in access to a statutorily independent external complaints body" for overseas students only, and that this might not necessarily be desirable. The implication of the ESOS Bill Schedule 2 is that the external complaints / appeals requirements under the National Code, i.e. that providers "have arrangements in place for external complaints or appeals", for eg:

- private conciliators or dispute resolution counselors;
- a complaints and appeal body established by a peak industry body;
- representatives of Commonwealth and state or territory government departments including the Office of the Training Advocate; or
- Commonwealth and state or territory offices of the Ombudsman may be the appropriate body for a public provider.

http://www.aei.gov.au/AEI/ESOS/NationalCodeExplanatoryGuide/PartD/Standard_8.htm [8 Nov]

The National Code currently suggests that Commonwealth and state or territory offices of the Ombudsman may be the appropriate external complaint/appeals body for a public provider. Yet under the ESOS Bill the Commonwealth office of the Ombudsman is proposed as the mandated external complaint/appeals body for private providers for overseas students. Should a domestic

student and an overseas student in a private provider have a complaint concerning the same issue – only the overseas student, under the ESOS Bill Schedule 2, would have a right of complaint to the Commonwealth Ombudsman (i.e., the Overseas Student Ombudsman). A domestic student of a private provider would presumably be reliant on any external complaint processes as are currently available - which, the ESOS Bill Schedule 2 seems to suggest are currently deficient.

I note that the current inquiry is considering the ESOS Bill, but that also before Parliament is the Ombudsman Amendment (Education Ombudsman) Bill 2010 (“the Ombudsman Bill”). Between these two bills, the Commonwealth Ombudsman is proposed to take on duties as the Overseas Students Ombudsman (under the ESOS Bill) and the Education Ombudsman (under the Ombudsman Bill). Under the ESOS Bill, it would seem the Commonwealth Ombudsman (in his/her role as the Overseas Students Ombudsman) would have a complaint handling function to hear complaints from enrolled/applying students requiring a visa to study in Australia, but not domestic students studying with a private registered provider. Under the Ombudsman Bill, it would seem the Commonwealth Ombudsman would have a complaint handling function to hear complaints more generally about an education provider (i.e., a higher education provider under HESA) or a registered provider (i.e., a provider registered under ESOS as approved to deliver a course for a State), with power to transfer complaints that would be better heard under another jurisdiction.

This arrangement would seem to account for both domestic and international students, but would seem to be a piecemeal approach to the issue, and could introduce some potential for jurisdictional overlap between the Commonwealth Ombudsman and respective State Ombudsmen (although, presumably, a transfer would occur as a matter of course when a complaint that could be heard by a State Ombudsman was lodged with the Commonwealth Ombudsman).

My comment would be that the Functions of the Commonwealth Ombudsman may already provide for the establishment of a scheme to hear complaints regarding registered providers, under (5) (1) (c) of the Ombudsman Act 1976.

[the Ombudsman] with the consent of the Minister, may enter into an arrangement under which the Ombudsman will perform functions of an ombudsman under an ombudsman scheme established in accordance with the conditions of licences or authorities granted under an enactment.

An ombudsman scheme, as defined in the Ombudsman Act 1976:

means a scheme providing for the investigation of complaints by consumers about matters relating to decisions or actions of the holders of licences or authorities granted under an enactment.

Rather than amending the ESOS Act or the Ombudsman Act to provide for the establishment of either an Education Ombudsman or an Overseas Students Ombudsman, it would seem that the Minister and Commonwealth Ombudsman could potentially instead, under functions already provided under the Ombudsman Act 1976, establish and administer a National Education Ombudsman Scheme.

Given the relationship between approval of a licence (to deliver a course for a State), and registration with the Commonwealth under ESOS, it would seem of value for such a scheme to be developed in partnership with the States, such that the terms of the Scheme described the

circumstances under which complaints would be heard by the Commonwealth Ombudsman, or transferred to a State Ombudsman/authority, for inquiry by the relevant State Ombudsman/authority.

An associated benefit of such a scheme could be harmonisation of the complaint handling process for complaints about higher education providers across jurisdictions, and through the reporting of information intended for publication by State offices to the Commonwealth Ombudsman, the Scheme could also serve to collect and publish information about complaints regarding actions of education providers or registered providers of concerns to Australian or Overseas students.

Thank you for the opportunity to make a submission to the *Education Services for Overseas Students Legislation Amendment Bill 2010 (Provisions)* Inquiry.

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