



**Submission by the
Overseas Students Ombudsman**

**DRAFT NATIONAL STRATEGY FOR
INTERNATIONAL EDUCATION**

Introduction

The Draft National Strategy for International Education was released in April 2015 for consultation and comment. It outlines a vision of Australian international education as a core element of Australia's economic prosperity, social advancement and international standing. The strategy defines three pillars of international education, six underpinning goals and a number of associated strategic actions. This submission outlines the strong contribution the Overseas Students Ombudsman's makes to Pillar 3: Staying Competitive; Goal 5: Ensuring a positive and rewarding student experience; Strategic action 5.1 Maintaining strong consumer protections. The number of overseas students and education providers the Overseas Students Ombudsman assists is increasing and there are opportunities for our services to be expanded as education providers embrace opportunities to grow international education within Australia and overseas.

Australia has a strong consumer protection framework for overseas students. It includes the:

- *Education Services for Overseas Students Act 2000* (ESOS Act)
- National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007 (the National Code)
- Australian Consumer Law
- Tuition Protection Service (TPS)
- Overseas Students Ombudsman
- State and Territory Ombudsman
- Office of the Training Advocate South Australia
- Regulators (the Tertiary Education Quality Standards Agency (TEQSA); the Australian Skills Quality Agency (ASQA) and the State and Territory Schools Regulators)
- Student advocacy and consumer assistance services such as the Study Melbourne Student Centre, the Victorian Consumer Action Law Centre, the Redfern Legal Centre's International Student Legal Advice Clinic and the Western Australian International Education Conciliation Service.

All education providers must be registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) before enrolling overseas students in a course.¹ CRICOS registered providers are subject to the provisions of the ESOS Act and must comply with the National Code standards.

Standard 8 of the National Code – Complaints and Appeals - requires all registered education providers to 'have an appropriate internal complaints handling and appeals process' and 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 refer students to an existing body where that body is appropriate for the complaint or appeal.'²

The Overseas Students Ombudsman is a statutorily independent, external complaints and appeals body for overseas students in the *private* education and training sector. The State and Territory Ombudsman provide a statutorily independent, external complaints and

¹ CRICOS is a publicly available register, accessible at: www.cricos.deewr.gov.au

² Standard 8.1 and 8.2 https://internationaleducation.gov.au/Regulatory-Information/Education-Services-for-Overseas-Students-ESOS-Legislative-Framework/National-Code/Documents/National_Code_2007_pdf.pdf

appeals service for overseas students studying with *public* registered education providers. The Office of the Training Advocate acts as an advocate for overseas students and also provides a statutorily independent, external complaints and appeals service for overseas students studying with public and private registered education providers in South Australia.

Background

Prior to 9 April 2011, with the exception of South Australia, overseas students in the private sector did not have a statutorily independent external body to hear their complaints and appeals. In February 2010, the Baird Review recommended the creation of the Overseas Students Ombudsman, within the Office of the Commonwealth Ombudsman, to handle complaints from overseas students about private registered education providers.

The Baird Review highlighted the following concerns about the Australian international education sector, which were reported during consultations in 2009:

- false and misleading information provided by some education agents
- poor quality education and training
- gross over enrolments
- lack of appropriate education facilities
- providers paying exorbitant commissions to education agents
- limited financial scrutiny of providers
- ineffective application and enforcement of regulation
- low English language entry requirements
- poor social inclusion of students in their institutions and the broader community
- inadequate complaints and dispute handling services and some duplication between Commonwealth and states and territories leading to confusion and unnecessary regulatory burden
- alleged workplace exploitation
- migration and visa issues
- deficient and expensive student accommodation
- lack of transport concessions and access to health services.

While Baird recognised the benefits of the growing international education sector, he found the unparalleled growth in the sector up to 2009 had also resulted in damaging pressures affecting education quality, regulatory capacity, and student's tuition protection infrastructure. Baird noted that these pressures had adversely impacted on international students' experiences in Australia and Australia's reputation for international education.

Baird emphasised the need for strong consumer protections to protect overseas students' rights and to improve the quality of the educational and living experience for international students. Baird found that this was lacking for overseas students in the private sector. Therefore, he recommended the creation of the Overseas Students Ombudsman.

In 2011, the Education Services for Overseas Students Legislation Amendment Act 2011 amended the ESOS Act, and the *Ombudsman Act 1976* to create the Overseas Students Ombudsman, which began operating on 9 April 2011. The Overseas Students Ombudsman was therefore created to provide strong consumer protections to overseas students in the private sector.

Role of the Overseas Students Ombudsman

The Overseas Students Ombudsman:

- investigates individual complaints about the actions or decisions of a private-registered education provider in connection with an intending, current or former overseas student
- works with private-registered education providers to promote best-practice handling of overseas students' complaints, and
- reports on trends and broader issues that arise from complaint investigations.

The Overseas Students Ombudsman provides a free service for intending, current and former overseas students of private registered education providers. The Overseas Students Ombudsman is independent and impartial. We do not advocate for overseas students or represent private education providers. We resolve students' complaints by considering whether their education provider has complied with the relevant legislative requirements and its policies.

In the last four years, the Overseas Students Ombudsman has received more than 2,000 complaints and external appeals from overseas students originating from over 68 countries about more than a third of the 975 private registered providers in our jurisdiction³. The majority (85 per cent) of registered education providers are private and therefore fall within our jurisdiction. This includes private registered providers in all education sectors:

- Schools
- English Language Intensive Courses for Overseas Students (ELICOS)
- Foundation courses
- Non-award courses
- Vocational Education and Training (VET)
- Higher Education.

In 2013-14 we received 519 complaints, which represented a 14 per cent increase on the previous year. This financial year (2014-15) we are experiencing a further 25 per cent increase in complaints and appeals received. We believe this is due to the increasing number of international students studying in Australia⁴ and greater awareness amongst international students of our role and services, in response to our outreach activities and word of mouth from students who have used our services.

The most common complaints the Overseas Students Ombudsman receives are:

- refund complaints and fee disputes
- external appeals about providers refusing to release a student so that they can transfer to another provider under standard 7 of the National Code
- external appeals against the decisions of providers to report students to the Department of Immigration and Border Protection (DIBP) for unsatisfactory attendance under standard 11 or course progress under standard 10 of the National Code.

Other complaint types include:

- Cancellation of enrolment (non-commencement, non-payment of fees, misbehaviour)
- Deferrals and temporary suspension of studies
- Education agents

³ According to PRISMS data as at 1 October 2014.

⁴ In 2014 the number of international students in Australia increased by more than 10 per cent on 2013 levels. www.pc.gov.au/research/completed/international-education

- Admissions refusals, grades, completion certificates and academic transcripts
- Providers' internal complaints and appeals processes.

We help overseas students and private registered education providers by:

- encouraging overseas students to use their provider's internal complaints and appeals process for most problems first
- investigating complaints from overseas students to determine if a private provider has followed the ESOS Act, the National Code and its own policies and procedures correctly
- deciding the complaint or appeal in support of the provider where it has followed the legislation and policies correctly
- identifying appropriate remedies for students where we identify substantive errors or non-compliance by a provider
- negotiating an appropriate remedy where there has been fault on both sides
- making recommendations and suggestions to help providers improve their policies, practices and staff training
- giving providers advice on best practice complaints handling to help providers resolve complaints directly with overseas students.

The ESOS framework informs the decisions we make about whether to investigate a complaint and whether to recommend preventative and/or remedial action to providers. Our recommendations and suggestions for improvements to education providers are informed by our experience in investigating complaints and working with hundreds of private registered education providers and overseas students. Education providers are required under Standard 8 of the National Code to implement any decisions we make in support of a student and any recommendations we make for corrective and preventative action.

Helping overseas students

Overseas students are often unaware of their rights under the ESOS Act, National Code and Australian Consumer Law. The availability of the Overseas Students Ombudsman means students can raise their concerns with someone independent and impartial and have their issues investigated in private for free. Even if the student does not understand the rules that apply to their circumstances, we use our knowledge of the legislative requirements and best practice complaints resolution to ensure the education provider has acted lawfully and the student has been treated fairly.

We obtain real remedies for students where their private registered education provider has not complied with the legislative requirements or its policies, as the following examples of cases we have received demonstrate.

Course progress – not reported

Ms A was not reported for breaching her student visa condition relating to course progress after the Overseas Students Ombudsman found her provider had not properly implemented an intervention strategy before deciding to report her.

Deferral request approved

Mr B had his request to temporarily suspend/defer his studies approved after the Overseas Students Ombudsman recommended his provider reconsider its refusal of his first deferral request, based on compelling and compassionate grounds.

Tuition fees refunded

Ms C received a refund after the Overseas Students Ombudsman investigated and found her provider had not listed the fees correctly in her written agreement, resulting in her paying more than the required fees.

Overseas Student Health Cover refund received

Mr D received a refund after he departed Australia and complained to the Ombudsman that his provider had not given him his Overseas Student Health Cover (OSHC) card, so he could not contact his health fund for a refund of unused fees. The Overseas Students Ombudsman found his provider had never transferred his OSHC fees to the health fund so the provider had to refund the money to Mr D. The Ombudsman also reported the provider's actions to the regulator.

Provider transfer approved

Ms E was allowed to transfer to another provider after the Overseas Students Ombudsman found her provider had not shown the transfer would be to her detriment.

Overseas students appreciate the service the Overseas Students Ombudsman provides. This is shown in the quote below from a student who was able to obtain their academic results after we contacted their education provider:

Thanks for your reply. I really appreciate what you have done. It would not be possible without your involvement. Yes, I will contact [education provider's] manager regarding grades. Again thank you for resolving my case.

We also provide assurance to overseas students that they have been treated according to the rules, even when the outcome may not be in their favour. This gives overseas students confidence that they have received fair treatment, as the following quote demonstrates:

With due respect I want to say that thanks a lot for your nice co-operation in the whole matter even if the decision is not in my favour but I really appreciate that Australian Government has regulatory bodies to monitor overseas students' rights and hopefully [education provider] will revise their agent policies [so] that future students will not get into any trouble, and I will still refer [education provider] for diploma courses to new students.

Many overseas students ask us how much it will cost for us to handle their complaint or appeal and are pleasantly surprised to hear that our services are free to them. We make it easy for overseas students to contact us or to lodge a complaint by providing a range of service channels. Most students contact us by telephone or through our online complaints form. We use telephone interpreters in a range of languages where necessary and provide answers to frequently asked questions in the top 21 overseas student languages on our website, which is optimised for mobile devices.

We publish a student e-newsletter for overseas students several times a year with articles that:

- educate overseas students about their rights and responsibilities under the ESOS Act and National Code
- provide tips on how to avoid problems with their education provider
- provide advice on how to resolve problems and make a complaint where necessary
- provide examples of students we've helped and the types of issues we can deal with
- direct students to the relevant ombudsman or other complaint handling body depending on the issue (e.g. Fair Work Ombudsman (FWO) for work rights issues, Private Health Insurance Ombudsman (PHIO) for OSHC issues etc.)
- refer students to advocacy/legal advice services that may be able to assist them.

We also work with the Council for International Students Australia (CISA) to deliver information and training to international students on these topics. CISA has promoted our services on its Facebook page and distributes our student e-newsletter to its student representatives throughout Australia. We also provide training to the incoming CISA Executive and speak to student representatives at the CISA national conference each year.

To ensure intending and former overseas students know about our services, we meet with the embassies, consulates and high commissions of key student source countries to advise them of our role and how we can help overseas students from their countries.

Helping education providers

We help education providers by examining their policies, procedures and work practices, as they relate to the particular complaint or appeal we are investigating, and provide valuable feedback to them. We explain the requirements of the ESOS Act and National Code to education providers when we set out the reasons for our decisions and why we have found that they have, or have not, complied with those requirements or their own policies and procedures.

We also examine how the education provider has handled the student's complaint through its internal complaints and appeals process and provide constructive feedback. We work with private registered education providers to promote best practice handling of overseas students' complaints and we have published a Better Practice Complaints Handling Guide for Education Providers on our website.⁵

We make recommendations and suggestions for improvements, which are targeted to specific areas. We also identify and make recommendations regarding systemic issues that go beyond the student's individual case and affect other students. This enables education providers to address issues, improve the quality of their services to international students and prevent further complaints.

We publish a provider newsletter, which contains useful information, advice and tips on avoiding common mistakes we see providers make in particular areas as well as how providers can improve their policies, procedures and services by learning the lessons we share, drawn from our complaints investigations. We send the provider e-newsletter to all private providers in our jurisdiction, as well as some public providers who have requested to be on our mailing list. One university distributes our provider newsletter to all the public universities, as the tips and advice are equally applicable to public providers even though they are not in our jurisdiction. Our newsletters are also published on our website.

⁵ www.oso.gov.au/publications-and-media/

We have received positive feedback about our provider newsletter and how useful it is to providers, as shown in the below quote:

As Principal of [education provider] for the past 10+ years, I remember receiving a VERY helpful email in particular, from your office, last year. Therefore, I am writing to ensure that in my new role, I am registered with your office, to receive your very helpful communications.

We also provide training to education providers on a range of topics related to the complaints and systemic issues we see. We work with the peak bodies to deliver face-to-face provider workshops and online training webinars.⁶ We also present at the major international education conferences⁷ on a range of relevant topics and are always receiving more invitations to speak to education providers around Australia.

We are proactive in dealing with systemic issues that extend across the sector. In 2014, we distributed a consultation draft issues paper to the peak bodies relating to refund complaints and fee disputes. We highlighted the high level of non-compliance we were seeing with providers' written agreements and sort comment on a draft provider checklist to help providers assess whether their written agreement was compliant with all the legislative requirements or not. Following feedback from the sector, we published the final issues paper and provider written agreement checklist in March 2015.

In 2014, we published an issues paper on Overseas Student Health Cover (OSHC) which involved our office liaising with DET, DIBP, the Department of Health, PHIO and the OSHC insurance companies. We made a number of recommendations for DET, DIBP and DH to consider and published a summary of the outcomes of those recommendations on our website in April 2015. This includes DIBP producing a fact sheet for education providers outlining their responsibilities in relation to arranging OSHC for overseas students.

We will soon be publishing an issues paper on course progress and attendance monitoring and reporting, including the best and poor practices we see amongst private education providers. We hope this paper will assist education providers to improve their policies, procedures and practices in this area to ensure they are meeting the National Code standards and providing due process to overseas students before reporting them to DET and DIBP for potentially breaching one of their student visa conditions. The issues paper will be accompanied by a fact sheet for overseas students highlighting their rights and responsibilities in relation to course progress and attendance.

Reporting on trends and broader issues

As outlined in the previous sections, we report on trends and systemic issues through our e-newsletters, issues papers, fact sheets and presentations at conferences and workshops. We also publish quarterly statistical reports that track complaints trends by issue and education sector and publish an annual report which summarises our key activities and outcomes each year.

⁶ This includes English Australia (EA), the Australian Council for Private Education and Training (ACPET), the International Student Advisors Network of Australia (ISANA), the Independent Schools Council of Queensland (ISCQ), Association of Independent Schools of South Australia, Study NSW and the Western Australian Private Education and Training Industry Association (WAPETIA).

⁷ This includes the Australian International Education Conference (AIEC) and the national conferences of EA, ACPET, ISANA and the National English language teaching Accreditation Scheme (NEAS).

We make submissions to relevant inquiries, including the Productivity Commission's inquiry into international education services and barriers to export services, the Senate's inquiry into the VET system, DIBP's review of the Streamlined Visa Processing (SVP) program and DET's Reform of the ESOS Framework. Our submissions are publically available on our website.⁸

We also participate in the international education roundtable, which brings together Commonwealth government agencies involved in international education and the State and Territory education departments. We also meet quarterly with DET, DIBP, TPS, ASQA and TEQSA to monitor and discuss trends and developments in the international education sector.

The Overseas Students Ombudsman has the power to report providers of concern to the national regulators, ASQA or TEQSA, and the State or Territory schools regulators, using our public interest disclosure powers under s 35A of the *Ombudsman Act 1976*. This ensures serious potential breaches of the ESOS Act or National Code or welfare issues relating to under 18 year olds are reported to the relevant regulator. Once we provide this information, it is up to the regulator to decide what regulatory action, if any, it should take. We also transfer complaints about the quality of an education provider's courses, staff or training facilities to the regulator for consideration. This includes complaints alleging fraudulent and/or unlawful behavior.

Connecting with other complaint handlers and consumer protection services

The Overseas Students Ombudsman has established an 'overseas student complaint-handlers network', which includes the State and Territory Ombudsman's offices, the South Australian Training Advocate and the Western Australian International Education Conciliator. We meet quarterly to discuss common issues and promote consistency amongst complaint handlers. We aim to ensure that overseas students with a complaint about their education provider can receive consistent outcomes and advice, regardless of which ombudsman or complaint handler they contact.

We also liaise with other complaints handlers including the FWO and the Australian Human Rights Commission (AHRC). The FWO and AHRC participated in our complaint-handlers panel at the CISA conference last year and will be again this year. We transfer complaints we receive about work rights issues and discrimination to the FWO and AHRC and they transfer complaints from overseas students about private education providers to our office. We are a supporter of the AHRC's 'Racism it stops with me' campaign, which we have promoted to overseas students and education providers.

We liaise with other consumer protection services which help overseas students, such as Study Melbourne Student Centre, the Redfern Legal Centre International Student Legal Clinic and the Consumer Action Law Centre in Victoria.

As noted in the Baird Review, 'a limited number of expert complaints handling bodies could, through sharing information on complaint trends, strengthen quality assurance processes and identify areas where ESOS regulators needed to review requirements or provide additional support to providers'. For this reason, in 2014 we held our inaugural Overseas Students Complaint Handlers Forum attended by members of the overseas student complaint handlers network, DET, DIBP, TPS and the regulators, with the CISA president as a guest speaker.

⁸ www.oso.gov.au/publications-and-media/

The forum was very valuable for bringing together all the key stakeholders involved in overseas student complaints handling and ensuring everyone understands each other's respective roles so we can work together and refer overseas students to the right services. This further contributes to ensuring that overseas students have a positive experience while studying and living in Australia.

The value of Ombudsman complaints services

The Productivity Commission's Access to Justice Arrangements Inquiry⁹ examined the cost of accessing justice services and securing legal representation. The civil justice system provides people with a wide range of means for resolving disputes and asserting legal rights, including court, tribunals, Alternative Dispute Resolution (ADR) services and Ombudsman services. However, the National Code notes that overseas students may not be able to access all of these services:

Overseas students and consumer protection

Overseas students differ from domestic students in that they are subject to migration controls and face different needs for consumer protection. Under Australian law, students from overseas are generally required to hold a student visa to enter Australia for education and training, and must comply with its conditions. Consumer protection must be appropriate for overseas students who usually cannot evaluate the quality of a course before purchase. If there is reason for discontent with the services they have obtained, they may not be able to remain in Australia to pursue the consumer protection remedies provided through Australian courts.¹⁰

The inquiry found Ombudsman schemes promote access to justice by:

- providing a mechanism for resolving low value disputes (for example, a court or tribunal is not the appropriate forum to deal with a complaint about an education provider not releasing academic transcripts on time)
- helping to overcome power imbalances, particularly when dealing with large service providers
- providing a process that is simple to use. (Ombudsman schemes actively pursue the resolution of disputes rather than leaving control of the case to the parties and this removes the need for professional representation such as lawyers)
- identifying and addressing systemic issues. (Systemic investigations represent an efficient form of dispute resolution as they address all instances of wrongdoing in the one complaint. Our projects on Written Agreements and Overseas Students Health Cover exemplify how we address systemic issues arising in individual complaints)
- resolving both legal and non-legal issues.

The Commission analysed the cost of resolving civil disputes across different fora, such as Ombudsman schemes, tribunals and courts, and concluded that:

- in the context of the broader civil justice system, Ombudsman schemes and other complaints bodies resolve a large volume of complaints at low cost
- one factor is that private legal expenses are not incurred by complainants
- systemic issues investigations can reduce the potential for complaints to arise, suggesting Ombudsman schemes represent even better value for money.

⁹ www.pc.gov.au/inquiries/completed/access-justice

¹⁰ <https://internationaleducation.gov.au/Regulatory-Information/Education-Services-for-Overseas-Students-ESOS-Legislative-Framework/National-Code/nationalcodeparta/Pages/ESOSNationalcode-PartA.aspx>

These findings suggest that the Overseas Students Ombudsman is well placed to offer efficient and effective consumer protection services to overseas students in the private education and training sector. It also suggests Ombudsman services are a good option when considering how to expand consumer protection to cover other types of international students and transnational education providers.

Opportunities to expand consumer protection

The Overseas Students Ombudsman's jurisdiction currently includes intending, current and former overseas students (most student visa holders) and private CRICOS registered education providers. This means we can only investigate complaints from overseas students who hold a student visa, held a student visa at the time the issue they are complaining about arose, or are an intending student, taking any steps towards becoming an overseas student/student visa holder.

Excluded from the definition of 'overseas student' are dependent family members of student visa holders and students studying in Australia on other types of temporary visas (.e.g. visitor visas, working holiday maker visas, subclass 456 short stay and subclass 457 long stay business visas). These students do not have access to an Ombudsman service currently.

English Australia reports that 40 to 50 per cent of ELICOS students (more than 50,000 students) are studying in Australia on a non-student visa.¹¹ This compares to 450,000 international students studying in Australia on a student visa across all education sectors. Students on non-student visas contact the Overseas Students Ombudsman, seeking to make a complaint about their private education provider. However, as these students are not currently within our jurisdiction, we have to refer them to other consumer protection services such as Fair Trading. It could appear unfair that students sitting next to each other in the same classroom, studying the same course at the same education provider and paying international student fees, do not have access to the same level of external complaints handling and appeals services.

We have the expertise to investigate complaints from these students and could do so if our jurisdiction was extended and we were funded for this work. If our jurisdiction was extended to allow us to investigate complaints from students in Australia on other visas and student visa dependents, our legislation would need to be changed to allow us to investigate private providers which are not registered to enrol overseas students on student visas but are registered to enrol domestic students and students on other visa types.

The other opportunity to expand our export services would be through transnational education. This includes private Australian education providers which deliver education and training courses at campuses they have established in other countries. It also includes students studying overseas by distance education with a private Australian education provider. As the students are not studying in Australia they do not require an Australian student visa. This means they are currently outside our jurisdiction. Extending our jurisdiction to allow the Overseas Students Ombudsman to provide external complaints and appeals services to these students would build confidence in the education services for Australian private education providers operating overseas.

¹¹ English Australian submission to the Productivity Commission Barriers to Export Services Study www.englishaustralia.com.au/submissions

We note that the regulators who register these providers in Australia, ASQA and TEQSA, already conduct audits of overseas campuses of Australian providers from a compliance perspective. However, the regulators do not handle individual complaints and appeals from overseas students in the way we do, so if our jurisdiction was extended we could provide a complementary service for education providers operating transnationally. This would also support private education providers in their expansion of transnational education services by ensuring there was a statutorily independent external complaints and appeals service that their students could use. It would also mean we could capture trends and issues across private education providers within and outside of Australia.

The Overseas Students Ombudsman has been approached to provide services to Australian education entities operating overseas but we have been unable to oblige. If we were able to support education providers to expand their export services by providing a complaints and appeals service to their offshore students this would create uniformity across their business and reduce red tape in by maintaining one model across onshore and offshore entities.

Conclusion

A reputation for quality is essential in a competitive global environment and that reputation rests on the experiences of international students. By resolving individual problems between overseas students and private education providers and identifying systemic issues and trends, the Overseas Students Ombudsman enhances the student experience and Australia's international reputation.

As outlined in this submission, our activities support the objectives of the draft National Strategy for International Education, particularly goal 5: maintaining strong consumer protections. The number of overseas students and education providers we assist is increasing and there are opportunities for our services to be expanded as education providers embrace opportunities to grow international education within Australia and overseas.