Overseas Students OMBUDSMAN

Submission by the Overseas Students Ombudsman

PRODUCTIVITY COMMISSION STUDY INTO BARRIERS TO SERVICES EXPORTS

Submission by the Commonwealth and Overseas Students Ombudsman,
Colin Neave

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Introduction

The Overseas Students Ombudsman is a statutorily independent, external complaints and appeals body for overseas students and private registered education providers.

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 commenced operations in April 2011. In the last four years, we have received more than 2,000 complaints from overseas students originating from over 68 countries about more than a third of the 975 private registered providers in our jurisdiction[1].

Eight-five per cent of education providers registered to enrol overseas students are private and therefore fall within our jurisdiction. Complaints and appeals by overseas students with public education providers fall within the relevant State or Territory Ombudsman's jurisdiction.

The Overseas Students Ombudsman sits within the Office of the Commonwealth Ombudsman, which also includes the ACT Ombudsman. In addition to our Overseas Students Ombudsman role, we also investigate complaints from domestic and overseas students about the Australian National University (ANU) (under our Commonwealth Ombudsman jurisdiction), and the University of Canberra (UC) and the Canberra Institute of Technology (CIT) (under our ACT Ombudsman jurisdiction).

The most common complaints to the Overseas Students Ombudsman 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.

We are pleased to provide a submission in response to the Productivity Commission's study into barriers to services exports in the education, financial services, health services, information technology, professional services, and tourism sectors.

Our submission focuses on current education services exports and the consumer protections for students, which support the export of those services. We discuss the role of the Overseas Students Ombudsman and the possibility of extending its complaints and appeals services to overseas students who are studying in Australia on a visa other than a student

[1] According to PRISMS data as at 1 October 2014.

visa as well as opportunities to provide services to students studying at offshore campuses of Australian private education and training providers.

Overseas Students Ombudsman export services

The Productivity Commission sets out four modes of services exports in its issues paper:

> Mode 1: Cross border supply – an Australian supplier supplies services to a foreign consumer in the country of export. For example, complaints handling provided by email to a student in another country.
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> Mode 2: Consumption in Australia – an Australian supplier supplies services to a foreign consumer in Australia. For example, complaints handling provided to an overseas student in Australia.
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> Mode 3: Commercial presence in country of export – an Australian supplier establishes or acquires a commercial presence in the country of export and supplies services to a foreign consumer in the country of export. For example, an education provider establishes a campus in another country and provides education services to consumers in that country using local staff.
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> Mode 4: Presence of natural persons in country of export – an Australian supplier sends its employee to the country of export and that person supplies services to the foreign consumer in the country of export. For example, an education provider sends Australian staff to work in its offshore campus, delivering services directly to foreign consumers in the export country.

In our view, the OSO is currently exporting services via modes one and two, as the examples above demonstrate.

Barriers and opportunities to expand our export services

Australia has a strong consumer protection framework for overseas students, which includes the provisions of the *Education Services for Overseas Students Act 2000* (ESOS Act), the 'National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007' (the National Code) standards and the Australian Consumer Law.

Standard 8 of the National Code requires all education providers delivering education services to overseas students to provide access to an internal and an external complaints and appeals process for overseas students. As an external complaints and appeals body, the OSO, in its decision making, has regard to the ESOS Act, the National Code and consumer law principles. The function the OSO plays as an independent complaints and appeal body for overseas students with private providers creates a level of confidence in the market.

One of the potential barriers to expanding the export of education services is the lack of consumer protection available to some students. The OSO is currently limited in its capacity to extend its services to overseas students on other visas or studying with an Australian entity overseas. However, if our jurisdiction was expanded, the OSO could play this role. Extending the OSO service would build confidence in the education services for Australian entities operating overseas and provide uniformity for education providers and uniformity across visa types that have a study element.

Our current jurisdiction includes intending, current and former overseas students (most student visa holders) and education providers registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) to deliver courses to overseas students.

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, 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) and students studying outside Australia at offshore campuses of Australian private education providers.

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 (export mode three or four). It also includes students studying overseas by distance education with a private Australian education provider (mode two). As the students are not studying in Australia they do not require an Australia student visa. This means they are currently outside our jurisdiction.

We note that the regulators who register these providers in Australia, the Australian Skills Quality Authority (ASQA) and the Tertiary Education Quality Standards Agency (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 OSO has been approached to provide services to Australian education entities operating overseas but have been unable to oblige. If the OSO was 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 that it would maintaining one model across onshore and offshore entities. In conclusion, the Overseas Students Ombudsman provides a valuable service to private Australian registered education providers through its independent, external complaints and appeals service for overseas students. We already export our complaint handling services via exports modes one and two. As outlined above, there is a potential opportunity to increase market confidence and to create uniformity for business by extending current OSO services.

We appreciate the opportunity to submit this submission to the Productivity Commission's study on barriers to export services. We would be happy to discuss the information we have provided or answer any queries the commission may have.