Plenary keynote speech to the
ISANA International Education Association Annual Conference

Overseas Students Ombudsman (A/g)

Ms Alison Larkins

Introduction

Distinguished guests, ladies and gentlemen, first of all, I would like to acknowledge the Mouheneennar people who are the Traditional Custodians of this Land. I would also like to pay respect to the Elders both past and present and extend that respect to other Indigenous Australians present.

It is a privilege to participate in ISANA's annual conference, which has brought together so many of the key players in the vitally important international education sector, and truly, it's an honour and a pleasure to be speaking here this morning in my home town, Hobart.

Thank you Danielle [Hartridge] for the opportunity to speak today – to share our knowledge and experience of just eight months of Overseas Students Ombudsman operations. I understand that the previous few days of the conference have seen some very stimulating and critical discussion. That's no surprise, seeing who has been participating. This conference is a great opportunity for all of us to reflect on what has been a hectic and challenging year for everyone in the international education sector.

As I said, the Overseas Students Ombudsman role is still quite new, only coming into being on 9 April this year. At the time we started taking complaints, all the talk in the media was of the devastating impact of declining numbers of overseas students on a once-booming industry as a result of a high Australian dollar, changes to student visa policy and some well-publicised violent incidents involving overseas students.

However, it is clear at this point in the year that while the sector continues to face challenges – and it may be a bumpy road ahead – it has proven to be remarkably resilient. There are still around 100,000 overseas students in private education and training, and around 900 private providers. When the Overseas Students Ombudsman service started, we said that we wanted the role to contribute to supporting a better, stronger sector for the benefit of all, and that's still true today.

I know that you might be interested to hear what we have learned from our eight months of taking complaints: to hear what are the main issues being raised in complaints and how we are resolving them. I will address these shortly, but first it may be useful to reiterate our approach to what is still a new role for the office of the Commonwealth Ombudsman.

Our role

First and foremost, what we provide for overseas students – and intending students – in private education and training in Australia is access to a free, independent and impartial complaints service when problems cannot be resolved directly with providers.

Together with state ombudsman who have ongoing jurisdiction over overseas students in relation to public education providers, we provide a critical safety net.

At the outset of the Overseas Students Ombudsman service we stated that we saw the indicators of a strong and healthy sector as including:

- an informed, confident body of overseas students who know their rights and their responsibilities and how to obtain redress if problems arise
- private education providers who are committed to providing their students with clear, unambiguous information and the necessary support to ensure they achieve their education goals, and who have effective systems for resolving problems in the first instance, and
- providers who are aware of, and accountable for, their education agents.

How – and why – did the Overseas Students Ombudsman come about?

People here are well aware of the Baird Review investigating education services for international students, which reported in March last year. As you know, among its many recommendations, the review 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 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, agreeing that international students should have access to the highest standard of complaint handling. It considered that better use could be made of existing statutorily independent complaint-handling bodies.

Legislation was drafted and referred to the Senate Education, Employment and Workplace Relations Legislation Committee in June last year.

The Act – the *Education Services for Overseas Students (ESOS) Amendment Act* – was passed in March this year, receiving Royal Assent in April. That effectively created the Overseas Students Ombudsman role and marked the operational start of the service, although the formal launch did not take place until July, at the Council of International Students Australia (CISA) conference in Melbourne, which many people here also attended.

This legislation gave the Ombudsman the power to investigate complaints about actions taken by private registered education providers in connection with overseas students, intending overseas students, or accepted students on a student visa, thus bridging a critical gap.

While a lot of effort has gone into investigating students' complaints since the start date in April, we are also looking to provide information on best practice complaints handling to private providers. Perhaps more importantly for the sector in the longer term, we have the capacity to publish reports on problems and broader issues in international

education that we identify through our investigations, although none are in progress at this relatively early stage.

How we investigate complaints

We investigate complaints involving the actions of registered private education providers in connection with overseas students, and intending overseas students. ‘Registered’ means being on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS), and CRICOS lists whether the institution is private.

We investigate complaints that come to us in private, which means between the complainant, the provider and our office. However, we can report to the Federal Minister for Education if certain conditions apply, such as:

If at the conclusion of an investigation, the Ombudsman is of the opinion that action taken by a provider:

- appears to have been contrary to law, or
- was unreasonable, unjust, oppressive or improperly discriminatory, or
- was otherwise, in all the circumstances, wrong

and the Ombudsman is of the opinion that there is further action that should be taken, the Ombudsman must report accordingly to the education provider, and the Ombudsman must give a copy of that report and any comments from the education provider to the Minister for Education.

If the provider does not take action on the recommendations within a reasonable time after the report was given, the Ombudsman can ask the Minister to table a report in each House of the Parliament. I must say at

this point that most providers have proven to be responsive to recommendations.

In addition, when assessing a complaint and deciding whether to investigate, we can transfer complaints that we receive about private education providers to other statutory complaint handlers and statutory offices, such as Commonwealth or state or territory education regulators, to those that are statutory offices, or the Fair Work Ombudsman, or the Australian Human Rights Commission, if we think that the complaint would be more conveniently or effectively dealt with by that office.

I would like to take this opportunity to clarify that we do not investigate complaints about public education providers (except for three higher education institutions in the ACT) under Commonwealth and ACT Ombudsman jurisdictions. If we receive complaints about public education providers in other states or territories, we offer to transfer the complaint to the state or territory ombudsman if the student consents to the transfer. And in South Australia, the South Australian Training Advocate deals with complaints from overseas students about both public and private education providers.

There still appears to be some confusion about this, so we do receive complaints about public education providers, and we are happy to transfer those complaint details.

Further, in relation to our role, we have been asked if our role is exclusive, and whether it is mandatory for providers to use us as the external appeals body. The answer is no. However, the Department of Education, Employment and Workplace Relations (DEEWR) expects that providers will use the Overseas Students Ombudsman, as our legislation has been amended to create this role and we are available as

a free service. It is expected that the National Code, namely the National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas students 2007, will be amended in 2012 to reflect this new role. However, we do understand that some issues and complaints may be appropriate for the respective education regulator (the registration and accreditation authority) to handle.

When investigating a complaint, we focus on the relevant law for example, the *Education Services for Overseas Students Act 2000*, and the National Code 2007, which is a legislative instrument. We also look closely at policy and procedures, including the providers' own policies and procedures. And we consider whether the student has been given a written decision with reasons for the decision, whether the student has been given procedural fairness and whether the actions of the provider were reasonable.

When forming a view about how to resolve a complaint, if we think the outcome is adverse for the student we give them an opportunity to respond to our decision before making a final decision. If the decision is likely to be adverse to the provider, we give them an opportunity to respond before making a final decision. This is an important part of resolving a complaint because it ensures that there is procedural fairness.

We can propose various remedies for a complaint, which we decide in support of the student, for example, that the provider:

- not report the student
- apologise to the student
- reconsider its decision
- provide better information

- provide a written decision with reasons
- improve a policy or procedure
- provide a refund of course fees

It is important to note that it can take us up to three months to resolve a complaint, or longer depending on the complexity of the issues.

Numbers of complaints

Since starting in April, we have received **342 complaints** about the actions of registered private education providers involving overseas students. This is the number of complaints that we have assessed as being within our jurisdiction to investigate, but we have also received a number of complaints that we consider to have been out of our jurisdiction, and we always aim to provide some advice or a referral option for the student to assist them with their problem. We have discretion to decline to investigate complaints if we consider that:

- the complaint is frivolous or vexatious or was not made in good faith
- the complainant does not have sufficient interest in the subject matter of the complaint
- investigation is not warranted having regard to all the circumstances
- the complainant has not yet raised the complaint with the registered provider
- the action came to the complainant's knowledge more than 12 months before the complaint was made
- the complainant has, or had, a right to cause the action to which the complaint relates to be reviewed by a court or by a tribunal.

Issues raised in complaints

The main issues raised in complaints that have been finalised are:

- refunds
- transfers between registered providers (Standard 7 - National Code)
- monitoring attendance (Standard 11 – National Code)
- provider closures
- monitoring course progress (Standard 10 – National Code)
- deferring, suspending or cancelling the student's enrolment (Standard 13 – National Code)
- formalisation of enrolment (Standard 3 – National Code)
- complaints and appeals (Standard 8 – National Code)

Other issues raised in complaints include:

- grades and assessment
- graduation and awards
- education agents (Standard 4 – National Code)
- staff capability
- educational resources and premises (Standard 14 – National Code)
- marketing information and practices (Standard 1 – National Code)
- completion within the expected duration of study (Standard 9 – National Code)
- course credit (Standard 12 – National Code)

- Overseas Students Health Cover;
- bullying and harassment;
- student engagement before enrolment (Standard 2 – National Code); and
- course closure.

What are common complaints?

Refunds and written agreements

We have received numerous complaints about disputes involving refunds of course fees. We rely on the provisions of the ESOS Act, the National Code and the providers' fees, refunds and cancellations policies to resolve these complaints.

There are a few issues we have observed in looking at these complaints. For example, it appears that some overseas students are not reading their contracts and written agreements before signing them at the time of enrolment. Written agreements must include information in relation to refunds of course money (Standard 3 of the National Code) and once a student has signed the written agreement, they have accepted the refund policy.

When assessing a complaint, we often have to refer students to the provisions of their written agreement. At this point they will sometimes say that they are not happy with what they have signed up to or that they did not realise exactly what they signed up to. The provisions of the written agreement can sometimes mean that they are not entitled to a refund when they have changed to a new provider, or that they are required to pay the next term's fees, even though they have cancelled their enrolment. So, we would strongly encourage providers – and

education agents – to make sure that they explain their written agreements before students sign them, and that these agreements are expressed in plain English. We would also encourage students to read their agreements very carefully before signing.

Under-age

We have also seen some cases where the provider has accepted a written agreement signed by an overseas student who is not yet 18 years of age, and not signed by a parent or legal guardian. In this situation, the provider is required to get the signature of the parents or legal guardian (see Standard 3 of the National Code). In one of the cases, the student complained to our office about a number of issues concerning the delivery of the course by the provider. We noted that the written agreement was not signed by a parent or legal guardian and recommended that the provider refund the full amount of course fees to the student to resolve the complaint, as the agreement cannot be considered binding.

This is an issue our office will focus on when resolving complaints from students who are under 18 years of age.

Transfers between registered providers

There have been numerous complaints about providers not releasing overseas students to transfer to a new education provider if the student has not completed the first six months of their principal course. The relevant standard of the National Code is Standard 7, which requires that registered providers assess requests from students for a transfer between registered providers prior to the student completing six months of the principal course of study in accordance with their documented procedures.

However, many students enrol in a course ‘package’ with the one provider, and their principal course may not start until the second year of their studies. So they may have completed six months study with the education provider, but still have six months, a year or more to go until they start their principal course. Meanwhile they may have changed their mind about what courses they want to study. Or they may not be satisfied with the education provider, or they may want to move to another city. There are many reasons why a student may want to change to a new provider.

In these circumstances, the education provider is required to assess each request from an overseas student to transfer to a new provider. If they refuse to issue a letter of release to the student, they must give the student written reasons for refusing the request, and they must inform the student of their right to appeal the decision, both internally and externally.

We have seen cases where the provider has not given reasons for their decision to refuse a letter of release, other than to say the student has not completed six months of their principal course. We do not consider this to be a reason; rather this is just a statement of the rule.

When assessing complaints we receive about providers refusing to release an overseas student, we note the advice contained in Standard 7 of the National Code which states that:

> *Registered providers, from whom the student is seeking to transfer, are responsible for assessing the student’s request to transfer within this restricted period. It is expected that the student’s request will be granted where the transfer will not be to the student’s detriment.*

This means that a provider should be releasing a student unless they have reason to suspect that the transfer to a particular provider will disadvantage the student. However, we have seen examples where it appears that the reasons for refusing a letter of release are based on potential detriment to the provider's business. We do not accept these reasons. In these circumstances, we will recommend the overseas student be released.

Monitoring course progress and monitoring attendance – Standards 10 and 11

Case study 1

Mr Y, an overseas student, complained that his provider intended to report him for unsatisfactory course progress (a breach of a mandatory student visa condition). He said that his reasons for failing were due to depression. The complaint investigation focused on the provider's administration of Standard 11 of the National Code, and decided in favour of the student.

We recommended that the provider not report Mr Y because the provider did not fulfil its obligations to the student by providing an adequate intervention strategy to assist the student to manage his studies. The provider was happy to accept the student back to continue his studies and help the student with counselling support.

This outcome was important for Mr Y in terms of the expectations of his family for his studies in Australia.

We have received numerous complaints where a student has been sent a notice of intention by the provider to report them for unsatisfactory course progress and unsatisfactory attendance, which are potential breaches of mandatory student visa conditions. Obviously the consequences of a cancelled visa can be severe for students in this situation.

There are a couple of issues we would like to highlight about these complaints.

One is the importance of the notification process, both before the report is made and when the report is made. The provider *must* make sure that they properly notify the student of their intent to report them. This is especially important given the consequences of a report to the Department of Education, Employment and Workplace Relations and the Department of Immigration – DIAC – which could result in automatic cancellation of a student's visa, under the current rules. We do note, however, the government's proposed changes to abolish the automatic cancellation of student visas and the mandatory cancellation of student visas for unsatisfactory attendance, unsatisfactory progress and working in excess of the hours allowed. And that these proposed changes are planned for the first half of 2012. However, under the current rules, if the student does not receive the notification from the provider, this creates problems.

In relation to notification, we note that there is a mandatory condition for all student visas (condition 8533), which states that students must notify their education provider of their residential address in Australia within seven days of arriving in Australia. In addition, students must notify their education provider of any change in their residential address within

seven days of the change. Given this requirement, the student's residential address should be the most reliable address contact available to providers and the most relevant when it comes to notifying the student of matters relating to their student visa.

We strongly encourage providers to use more than one method to notify the student of the report, but providers need to make sure that they notify the student at their most recently nominated residential address. It is not sufficient to rely on text messages or notices sent to a student's online account.

Case study 2

Miss X, an overseas student, complained that her provider intended to report her for unsatisfactory attendance (a breach of a mandatory student visa condition). Our investigation identified a number of issues with the provider's attendance monitoring policies and procedures, including inconsistencies between requirements under the National Code and the provider's policies and procedures.
We recommended that the provider not report Miss X. We also recommended that the provider update their policies in accordance with our recommendations. The provider did so within one week and emailed us with the updates.

Another issue arising in complaints relating to Standards 10 and 11 is the importance of providers having good policies and procedures. We have had complaints where it is difficult for us to assess whether the provider has properly monitored and calculated the student's attendance because the provider has not included in their attendance policy a statement of the study period (for example, term, semester, trimester)

over which attendance and absences are recorded and calculated for the course, which is noted in the explanatory guide to the National Code. In these cases we have recommended that students not be reported, and that the provider revise their policies. This has resulted in systemic improvements that have benefited other overseas students.

Reasons for decisions

As previously mentioned, reasons for decision are important because they help students to understand decisions, and thereby respond accordingly. Standard 8 of the National Code requires providers to give complainants or appellants a written statement of the outcome of a complaint or appeal, including details of the reasons for the outcome. We focus on this requirement when investigating complaints, and recommend that providers give written decision letters with reasons if they have not already done so, as a resolution to a complaint.

What can providers do to minimise complaints to the Ombudsman?

Case study 3

Ms Z, an overseas student, complained that she was scared and confused by a letter she had received from her previous education provider. Our investigation found that the provider could request a cancellation fee from the student, however, the way they conveyed this information was confusing and written in a threatening way.

We recommended that the provider re-send the information to the student using plain English and seeing the information out in a more clear way. The provider sent a new letter to the student within a matter of days. The new letter acknowledged that the previous letter was not clear and included an apology for this. It also clarified

exactly why the student still owed fees (this was in accordance with a written agreement the student had signed when they first enrolled at the provider).

To begin with, I would like to stress how important it is for agencies to value complaints and to recognise that effective complaint handling can benefit their reputation and administration. From our experience investigating complaints about government agencies, we have found that complaints can highlight weaknesses in an agency's programs, policies and service delivery, and can stimulate an agency to improve its business. Good complaint handling often reassures clients that the agency is committed to resolving problems, improving relations and building loyalty, and improving the agency's accountability and transparency. These lessons are also relevant to the delivery of education and training by private providers.

For providers wanting to reduce the risk of complaints to us, what follows may be useful.

First of all, we usually do not investigate a complaint until it has been raised with the education provider involved. This gives the provider an opportunity to solve the matter first. The office has found that this is usually a more efficient way of resolving a complaint.

However, where a student is not satisfied with a decision about the outcome of an internal complaint or appeal, they may want to exercise their right to go to an external complaints mechanism which in most instances means a complaint to the Overseas Students Ombudsman. They are entitled to do so.

We understand that overseas students who are at risk of being reported for a breach of a student visa condition will often access the external appeals process after the internal appeals process, and they too are entitled to do so.

In addition to noting the suggestions arising from common complaint issues that I have spoken about here, such as having clear policies and providing timely information, I would encourage providers and others also to consider the advice contained in our better practice complaint handling guide for education providers. The guide is on our website – www.oso.gov.au – and I also have some copies available here should anyone be interested. And again, I would like to stress the importance of good complaint and appeal handling by education providers themselves.

This guide provides a complaint handler's checklist, issues to think about including accessibility, fairness, efficiency, responsiveness, integration, culture and people, and a checklist to help assess whether the provider meets the National Code's complaint handling standards.

Recently, one provider asked our office if they could change their decision to report an overseas student for a potential breach of a student visa condition as part of the internal appeal decision-making process. Our advice was that yes they can. This is the whole purpose of the internal appeals process; it is an opportunity for the provider to assess whether its original decision was correct. The provider should have an open mind and consider its own actions, whether they have done enough to support the student, and whether they have followed the requirements of the National Code. We can also give providers advice and training on best practice complaint handling. If providers have any questions or would like our advice, please contact us.

The future

We recognised at the outset of the Overseas Students Ombudsman service that the international education sector is complex and diverse and operates in a difficult and competitive climate. It is made up of large and small private providers who are long-established and new, and it serves a large, culturally and linguistically diverse and often-vulnerable body of students.

What we believe we can contribute that will best serve the needs of students, private providers and the international education sector more broadly into the future is something we have more than 30 years' experience in – best practice complaint handling, impartiality and independence.

On that note, ladies and gentlemen, I thank you for your time and attention and I wish you all well, whatever your role in this important and exciting industry sector.