



NSW Ombudsman

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The Hon. Bruce Baird
Review of the *Education Services for Overseas Students Act 2000*
esosreview@deewr.gov.au

Dear Mr Baird,

NSW Ombudsman's submission to the Review of the *Education Services for Overseas Students (ESOS) Act 2000*

Background

My office has jurisdiction over the ten public universities in NSW and TAFE. Since the introduction of the *Education Services for Overseas Students (ESOS) Act* in 2000, we have received 49 complaints from international students. Many of these complaints relate to the adoption of the *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007* (the National Code) in relation to international students.

The National Code obligates TAFE and universities to provide a free or low cost external complaint review process for international student complaints. Most NSW campuses are using the ordinary complaint process of my office as this review, although sometimes the student would be referred to another oversight body (for example, if the matter involved a breach of privacy or discrimination).

Most complaints we receive are about an international student's exclusion from their course. There is an information sheet on my office's website that addresses how these matters are handled:

<http://www.ombo.nsw.gov.au/show.asp?id=473>.

Provision of advice to universities so they can fulfil their obligations to the Commonwealth

My office can investigate the administration of TAFE or a university where there is evidence of wrong conduct. In deciding whether to investigate a complaint, consideration is given to whether there is evidence of administrative errors or misconduct.

My office can formally investigate a decision to exclude an international student and if we find the complaint is justified, the findings are reported to TAFE or the university concerned



and the relevant Minister. The complainant is also told of the conclusions and findings. I cannot force TAFE or a university to comply with any recommendations.

If a complaint is investigated, the agency concerned would be given an opportunity to provide information in support of their decision to exclude a student. We would then advise both the complainant and the agency the outcome of the complaint. Some complaints are not investigated and my office is not obliged under the *Ombudsman Act 1974* (the Act) to advise TAFE or the university that a complaint has been lodged, or that a decision has been taken to decline to investigate a complaint. Any information we provide to an external agency needs to be in line with the Act and the secrecy provisions that bind my office.

However, I recognise that if my office does not advise TAFE or a university it has declined to investigate a complaint in relation to a decision to exclude a student, they are unable to fulfil their reporting obligations to the Commonwealth.

In light of this consideration, we have established certain protocols with TAFE and each university within jurisdiction to provide information about the outcomes of complaints relating to exclusions. Under the current protocol, we advise TAFE or the university under section 31AC of the Ombudsman Act which matters relating to the exclusion of an international student have been received, declined or are ongoing.

The use of the term “appeal”

I note that in addition to meeting the requirements of the ESOS Act, registration requires that TAFE and universities meet the standards set out in the National Code in relation to complaints and appeals.

Standard 8 of the National Code states:

Registered providers' complaints and appeals processes are independent, easily and immediately accessible and inexpensive for the parties involved.

In relation to external appeals, the National Code states:

- 8.2 The registered provider must 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.
- 8.3 If the student is not satisfied with the result or conduct of the internal complaint handling and appeals process, the registered provider must advise the student of his or her right to access the external appeals process at minimal or no cost.
- 8.4 If the student chooses to access the registered provider's complaints and appeals processes as per this standard, the registered provider must maintain the student's enrolment while the complaints and appeals process is ongoing.
- 8.5 If the internal or any external complaint handling or appeal process results in a decision that supports the student, the registered provider must immediately implement any decision and/or corrective and preventative action required and advise the student of the outcome.

The use of the term “appeal” in the National Code can raise expectations among international students that my office is able to overturn an agency's decision. In fact, it is not my role to make a decision in place of the TAFE or university. My review is an administrative one and I will not review the merits of the decision unless there is clear evidence of improper conduct on the part of the agency.

Many students lodging complaints with my office provide evidence along the lines of medical certificates, evidence that they had difficulty obtaining accommodation or evidence of other personal difficulties they may have experienced, with the expectation that my office will make a finding based on these considerations.

However if the internal appeal process has been followed by the TAFE or university, my office will not take any action unless there is clear evidence of an error or some improper conduct. The sorts of issues my office can look at are delays, not following the policy, a problem with the procedures and improper behaviour of staff. Our inquiries relate to the conduct of TAFE or the university itself, not the personal circumstances of the complainant.

In order to better manage international students' expectations, my office issued the aforementioned information sheet to assist students in preparing complaints to this office.

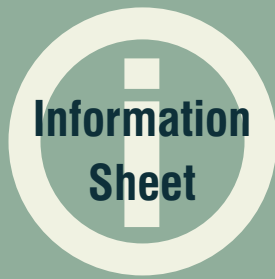
If you require any further information in relation to this submission, please contact [REDACTED]

Yours sincerely



Bruce Barbour
Ombudsman

14/10/09



Are you an international student who has been excluded from your university or TAFE course?

If you have been excluded from a university or TAFE course in New South Wales you have a number of ways to appeal the decision or make a complaint if you think the decision is unfair or wrong.

All students have a right to an internal and external review. The issues looked at in each review will be different.

Appeal to your university or TAFE – internal review

If you think the decision is unfair or unreasonable you can lodge an appeal with your university or TAFE. There will be a policy on how appeals are carried out and there will be a deadline for when you need to appeal by.

You will need to provide the details of why you are appealing and all the relevant evidence you have. The university or TAFE will look at the evidence you provide and decide if the right decision was made to exclude you. This is sometimes called a review of the 'merits' of the decision. They will also decide whether the process has been followed, and whether it was fair and reasonable.

Some universities will also let you complain to a university ombudsman or a complaint unit – you should check with the university about this and what issues they will look at.

Complaint to the NSW Ombudsman – external review

The role of the Ombudsman is different to an internal appeal. The Ombudsman can investigate the administration of the university or TAFE where there is evidence of wrong conduct. The Ombudsman does not make a decision in place of the university.

In deciding whether or not to investigate a complaint, the Ombudsman considers if there is evidence of administrative errors or misconduct. If the internal appeal process has been followed, we will not take any action unless there is clear evidence of an error or some improper conduct.

The sorts of issues we can look at are delays, not following the policy, a problem with the procedures and improper behaviour of university or TAFE staff.

What can the Ombudsman do?

If we cannot take up your complaint we will tell you the reasons why. Most complaints where something has gone wrong can be resolved informally. Usually we will phone the university or TAFE and ask for an explanation. We often ask to see the documents from the appeal file. Many issues can be dealt with this way.

We might suggest to the university or TAFE what could resolve the problem, although we cannot make them agree to our suggestions.

If we are not happy with the response by them we may formally investigate a decision. If we find your complaint is justified, the findings are reported to the organisation concerned and the relevant Minister. You are also told of the conclusions and findings.

In a report, the Ombudsman may recommend:

- the university or TAFE reconsider or change its action or decision
- a law, rule or procedure be changed
- the university or TAFE take other appropriate action (e.g. compensation)
- in serious cases, beginning of disciplinary proceedings.

We cannot force a university or TAFE to comply with our recommendations, although they usually do. If they do not, and we believe it is in the public interest, we may make a report to the NSW Parliament.

How can you lodge a complaint with the Ombudsman?

You will need to ensure you lodge your complaint with the Ombudsman's Office as soon as possible after you hear the result of your appeal. The university or TAFE can tell you whether they have a set time period allowing you to lodge an external appeal before they inform the Commonwealth Government you are no longer a student.

You should make every effort to meet this deadline, but you can complain to the Ombudsman at any time.

You will need to write a letter of complaint to the Ombudsman setting out the issues. However, a first phone call may help clarify the issues or help you understand the Ombudsman's complaint

handling procedures. For example, some complaints may need to be made to a different agency (such as complaints about discrimination or a breach of privacy).

The Ombudsman's office operates an inquiries service from 9am – 4pm weekdays. You can call 9286 1000 or toll free 1800 451 524.

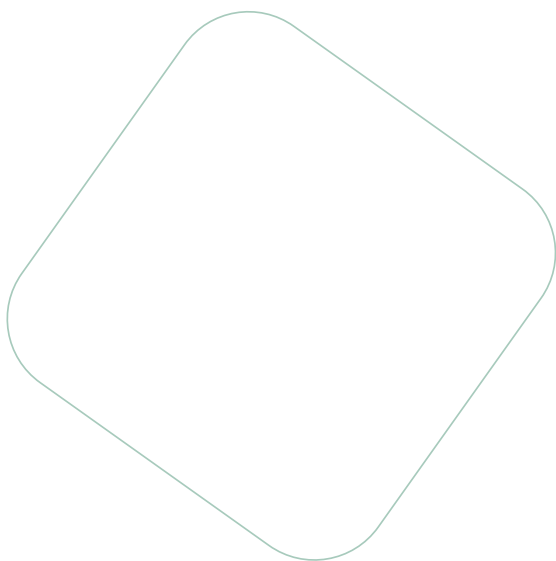
You will need to provide all the evidence at the start of your complaint. Your evidence should show where the university has failed to follow the normal procedures or why the decision involved improper conduct.

Someone will be given the job of answering your letter.

What happens at the end of your complaint being considered?

We will tell you our decision in writing and give full reasons for our decision. You will also be able to talk to the person dealing with your complaint.

We will also tell your university or TAFE what the outcome of your complaint is, so that they can tell the Commonwealth Government of your progression status. The university or TAFE is required by law to advise the Commonwealth Government you have been excluded if your external complaint has not been upheld.



Contact us for more information

Level 24 580 George Street
Sydney NSW 2000



If you wish to visit us, we prefer you make an appointment. Please call us first so we can ensure your complaint is within our jurisdiction and our staff are available to see you.

Our business hours are:
Monday to Friday, 9am–5pm
(Inquiries section closes at 4pm)

General inquires: 02 9286 1000

Toll free (outside Sydney metro): 1800 451 524

Tel. typewriter (TTY): 02 9264 8050

Facsimile: 02 9283 2911

Email: nswombo@ombo.nsw.gov.au

Web: www.ombo.nsw.gov.au

Telephone Interpreter Service (TIS): 131 450
We can arrange an interpreter through TIS or you can contact TIS yourself before speaking to us.

This brochure is one of a series of information brochures produced by the NSW Ombudsman. Feedback is welcome. ISBN: 978-1-921131-75-2