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4 November 2009

The Hon Bruce Baird
Chair

Review of the *Education Services for Overseas Students (ESOS) Act 2000*

Via email: esosreview@deewr.gov.au

Dear Mr Baird

Submission to the Review of the *ESOS Act 2000*

I have pleasure in attaching for your consideration my submission to the Review of the *ESOS Act 2000*.

We would welcome the opportunity to be involved in stakeholder discussions and future consultation processes. For further information your staff should contact [REDACTED]

Yours sincerely



Chris Field
OMBUDSMAN WESTERN AUSTRALIA

1 Introduction

We welcome the opportunity to make a submission to the Review of the *Education Services for Overseas Students (ESOS) Act 2000*. This submission focuses on Discussion Question – “*Supporting the interests of students*” and in particular, point (iii) under this Discussion Question - “*Are different mechanisms needed to support international students to resolve complaints effectively? Are additional complaint mechanisms needed?*”.

Our submission is based on the Ombudsman Western Australia’s (**OWA**) 37 years of experience in investigating complaints from students about the public education sector. This submission also incorporates learnings from our practical experience of dealing with international student complaints since the introduction of the ESOS Act, as well as the *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007 (the National Code)*.

2 The role of OWA is to investigate complaints about statutory authorities, including public education providers

OWA is an independent and impartial person whose office investigates complaints about the administrative decisions and actions of Western Australian Government agencies, statutory authorities, local governments, schools, TAFE colleges and public universities. The Ombudsman also has the authority to initiate an enquiry or investigation about any of these public bodies, even when no specific complaint has been received. In order to conduct this work, under the *Parliamentary Commissioner Act 1971 (the Act)*, the Ombudsman has all the powers, rights and privileges of a Royal Commission.

Stated simply, OWA aims to serve Parliament and the people of Western Australia by:

- Investigating and resolving complaints about the decision making practices and procedures of public authorities; and
- Improving the standard of public administration.

In support of these aims, OWA’s strategic focus is to provide:

- Complaint resolution that is independent, fair and timely, raising community awareness of our role and increasing access to our services;
- Improved public administration through investigation of concerns that affect the broader community, recommending improvements and promoting good practice;
- Review and investigation of certain child deaths and making recommendations to the Department for Child Protection and other public authorities; and
- Audit of telecommunications intercepts and review of appeals by international students.

OWA's services are free to complainants and available to anyone. Since its establishment, OWA has received and investigated complaints about government agencies, local government authorities and statutory bodies.

In 2008/09, over 5500 people contacted OWA, and the office dealt with 1238 complaints for formal investigation. Our work in complaint investigation and resolution resulted in:

- 124 remedial actions by public authorities to assist complainants;
- 69 improvements to public administration;
- 100% of our recommendations accepted by public authorities.

The average time to resolve complaints was 76 days.

In addition, OWA has improved public administration through two major projects examining:

- Management of personal information by public authorities; and
- Effective administration of complaint handling systems by public authorities.

3 OWA undertakes a specific role with respect to international students

As discussed above, complaints from students - both domestic and international - about public universities, TAFE Colleges and schools are within OWA's jurisdiction due to the status of these organisations as public authorities. OWA does not have jurisdiction in relation to private education service providers.

With the introduction of the National Code, the four public universities and a number of Western Australian TAFE colleges have nominated OWA as their external appeals body. Accordingly, OWA has agreed to investigate complaints from onshore international students seeking an external appeal of the decisions of these public education service providers.

OWA's investigation of international student complaints is governed by the *Parliamentary Commissioner Act 1971*. The focus of any investigation is therefore on whether the public education provider followed a fair and proper process. Within OWA, international student complaints are treated with priority on the basis that an adverse outcome for a student may lead to the cancellation of a student's visa. As part of our investigation, OWA also includes an assessment of whether the public education provider complied with the standards in the National Code.

Between 1 July 2007 and 30 June 2009, OWA received 43 allegations from international students. The main allegations arising from complaints have been:

- Unreasonable termination of enrolment in course of study (66%);
- Failure to properly consider personal circumstances (9%);
- Failure to provide adequate information and support (9%); and
- Procedural fairness denied (9%).

OWA has a designated officer to handle overseas students complaints, and given the importance of timely resolution for these students and the public education service providers, the processing of these complaints is expedited.

In addition to responding to complaints, OWA is also undertaking a pro-active capacity building program to assist public universities and TAFE colleges in Western Australia to establish and maintain effective complaints and appeals processes for international students. This program, which is based on on-going consultations with public education providers, comprises three strategies:

- Development of resources for public authorities that are specifically tailored to the management of international student complaints, including complaints management guidelines and a factsheet;
- Development of a set of good practice standards for handling complaints from international students; and
- Conducting education and awareness training to assist public education providers incorporate these standards into their complaints handling processes.

In addition, OWA's capacity building program will provide an evidence base to ensure that further activities are appropriate and tailored to the needs of international students younger than 18 and the public education providers in this area of the education sector. Education providers have additional obligations under the National Code in relation to younger students.

4 OWA's learnings from handling international student complaints relevant to the Review

4.1 The standards for complaint handling set out in the National Code

With the introduction of the National Code in 2007, this office has seen an increase in the number of complaints from international students.

Currently, the National Code requires international education providers in Australia to comply with a set of standards. OWA's experience in dealing with complaints from international students is that the agencies complained about have generally complied with these requirements, and there has been no basis for OWA to uphold student appeals. For example, when students are experiencing difficulties with their studies, providers can meet the requirements of the National Code by providing students with a list of contact details for counselling services, the student guild or the international student advisor.

Through OWA's on-going liaison, consultation and assistance to public education providers, it continues to promote the adoption of better practices where there is a need and it is appropriate to do, and the benefits of adopting such better practices outweigh the potential costs that such better practices may impose (including establishment, compliance and opportunity costs).

4.2 Complaints mechanisms for private sector providers

OWA also receives complaints from international students attending organisations run by the private sector. For those international students, the Ombudsman's jurisdiction only allows the office to accept complaints about authorities established for a public purpose under a written law of Western Australia. OWA currently refers these students on to the most appropriate body to deal with their complaints.

There may be many options available relating to the handling of complaints from students of private sector and public sector education providers, including having complaints regarding private and public educators heard by a single body. There could also be many ways to establish such a body, including industry based ombudsman models (many of which are now also undertaken by the Parliamentary Ombudsman).

5 CONCLUSION

This office would welcome the opportunity to be involved in stakeholder discussions and future consultation processes. For further information Review staff should contact 