

OFFICIAL



Draft International Education and Skills Strategic Framework

Submission by the Commonwealth Ombudsman, Iain Anderson

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Introduction and summary

The Commonwealth Ombudsman has been the Overseas Students Ombudsman (OSO) since April 2011. Since commencing the OSO role, the Office of the Commonwealth Ombudsman (the Office) has finalised 11,450 complaints from international students (correct as at 31 May 2024).

In many cases, the Office can influence fair and reasonable outcomes for students by highlighting to providers where their conduct does not accord with relevant legislation. This submission shares our insights from investigations where achieving outcomes for students is more difficult, due to gaps or potential unintended consequences in the existing legislative framework. We also make suggestions for the government and the Council for International Education to consider when finalising the International Education and Skills Strategic Framework (the framework).

Background

The purpose of the OSO is to:

- provide assurance that the providers we oversee act with integrity and treat people fairly, and
- influence systemic improvement in the experience delivered to international students by private education providers.

We aim to achieve our purpose by:

- providing international students with information about their right to make complaints to and about private education providers
- independently and impartially considering complaints about private education providers registered to deliver courses to international students
- influencing education providers to be accountable, lawful, fair, transparent, and responsive, and
- sharing insights gained from handling international student complaints with industry and government.



Response to terms of reference

The draft framework outlines 3 objectives:

1. A Sector Built on Quality and Integrity
2. A Managed System to Deliver Sustainable Growth Over Time
3. Taking Australian Education and Training to the World.

Complaints to the OSO are most relevant to **Objective 1: A Sector Built on Quality and Integrity**. Our submission specifically discusses:

1. The transfer-restricted period
2. Enhanced monitoring
3. Further reforms to improve the quality and integrity of the international education sector: written agreements.

1. The transfer-restricted period

The draft framework highlights efforts to prevent international students first applying to study with a low-risk provider and later changing to a higher-risk provider, thereby reducing the level of scrutiny applied to their visa application. These arrangements also seek to prevent providers poaching students.

The government has strengthened the effect of the transfer-restricted period. International students must complete *at least* 6 months of principal course before they can change providers, unless the original provider agrees to release them earlier.

On several occasions, the draft framework refers to this as a 'six month' period. This does not reflect the reality that some students, who are enrolled in long packages of courses, cannot change study provider for much longer than 6 months.

Our [submission to the 2022 review of the Education Services for Overseas Students Framework](#) detailed the impact of transfer restrictions on students in longer packaged courses and made suggestions aimed at balancing the integrity of the overseas education system with affording students more choice as consumers. These suggestions included:

- Requiring students to complete a period of study longer than 6 months before changing provider, but not extending to their principal course
- Giving students access to an impartial body that could determine if they should be released, rather than leaving the decision with their existing education provider, who has a commercial interest in keeping the student
- Giving providers greater legislative guidance about deciding whether to grant students' requests for release
- Removing incentives for students to enrol in long packages (for example, by reducing the cost of obtaining subsequent student visas).

We remain of the view that implementing these suggestions would also assist in achieving the draft framework's assertion that:

"Actions of providers must reflect a commitment to the best interests of the student. This includes facilitating changes in their courses where appropriate..."

2. Enhanced monitoring

The draft framework states:

"It is critical for Australia's reputation that relevant agencies respond quickly and effectively to combat emerging integrity or compliance issues and act against unscrupulous education providers".

We agree with this proposition. The Joint Standing Committee on Foreign Affairs, Defence and Trade's Inquiry into Australia's Tourism and International Education Sectors (the Inquiry) made a recommendation to the Office and other agencies aimed at addressing integrity concerns by improving data sharing across agencies.

Recommendation 12 of the Inquiry report states:

The Committee recommends the Government significantly improve data sharing between agencies to address serious integrity concerns, including formal information and sharing agreements and platforms between the Department of Home Affairs, the Department of Education, Tertiary Education Quality and Standards Agency (TEQSA), Australian Skills Quality Authority (ASQA), and where appropriate, the Commonwealth Ombudsman, Austrade and the Department of Employment and Workplace Relations.

Government should form or utilise an existing cross agency expert group to oversee the development of these platforms to ensure:

- *legislative basis and privacy considerations are appropriately addressed without preventing the effective sharing of information*
- *platforms are sufficiently resourced to rapidly identify and track high-risk behaviours by education providers, education agents and related third parties and have capacity to map such behaviours to international student movements and student visa data*
- *platforms can inform more effective and timely regulatory action to deter and disrupt international student exploitation and safeguard Australian international education and visa integrity.*

When we investigate complaints, we often identify compliance matters and other issues which could affect the reputation of Australia as an international education destination.

Our ability to share that information with agencies who can act on it is subject to confidentiality provisions in the *Ombudsman Act 1976* (Ombudsman Act). These require investigation staff to undertake a procedural fairness process before sharing a critical opinion about a provider. While the application of the rules of procedural fairness is common across the Ombudsman's operations, in particular where it involves the conclusions from an investigation, with education providers it can be a particularly contested and resource-intensive process, which can significantly affect the timeliness (and potential utility) of any information shared.

Within the context of the framework, one option might be for government to consider changes to the Ombudsman Act to enable the Office to more readily share information gained through international student complaints with regulators and policy agencies. Specifically, government could consider leaving the application of procedural fairness to the considerations of recipient agencies, permitting the OSO to more readily share information gained during complaint handling and investigation, while still requiring the OSO to provide procedural fairness before disclosing its finalised opinions on appropriate complaint outcomes.

3. Further reforms to improve the quality and integrity of the international education sector: Written agreements

When investigating complaints, the Office has identified some providers' written agreements impose harsh terms which limit students' access to refunds of pre-paid fees. Under the current *Education Services for Overseas Students Act 2000*, the only situation where refunds are mandatory is if a student's visa is refused and the refusal is the reason the student could not commence the course of study.

We are aware of instances where this has resulted in providers retaining large amounts (in many cases above \$10,000) when a student withdraws from study in circumstances including where:

- the student withdraws because their visa has been in process for a lengthy period (sometimes over 12 months). They may do this, for example, because:
 - they are afraid the visa will be refused and do not want a visa refusal on their record
 - they experienced a significant life event (death of family member, change in financial capacity, etc.) since lodging the application
 - they have changed their plans and no longer wish to study in Australia.
- the Department of Home Affairs granted the visa, but cancelled it shortly afterwards (meaning it is not considered a visa 'refusal')
- the student's visa was granted, but they experienced a significant life event so decided not to study
- the student did not apply for a visa due to significant life events intervening
- the student's visa was granted and they commenced but were not able to continue the study and the provider retained pre-paid fees for future courses or study periods.

We consider it unlikely a provider could rely on these terms under Australian Consumer Law (ACL) but are not aware of any international students taking providers to a tribunal or court to obtain relief under ACL.

We consider such decisions unfair, but we are also concerned about their effect on the reputation of the Australia's international education sector. We also consider that allowing terms like these in agreements provides unscrupulous providers an incentive to accept or encourage large amounts of pre-paid fees, knowing they will not provide the student a refund even in reasonable circumstances.

We suggest the government considers extending the situations in which providers must make refunds to international students.

The Office made other suggestions to improve the fairness and effectiveness of written agreements in our [submission to the 2022 review of the Education Services for Overseas Students Framework](#), including introduction of:

- waiting periods and cooling off periods
- critical information summaries, and
- model clauses.