

Are you the person who ...?
**Reflections on the challenges and opportunities of the role of student
ombudsmen in an Australian university**

Since the mid 1990s, participation in Australian higher education has increased and become markedly more diverse. For today's students there is much at stake, and it is clear that they are quite unlike the full-time, always-on-campus, straight-from-high-school student of past decades. The shift towards time-poor and financially stretched students began in the 1990s with the increasing socio-economic pressures to work, the rising cost of living, the introduction of HECS¹, and the large numbers who are paying full fees for their courses.² There is an increasing student body who are less interested in the student experience than in completing their qualifications with the best marks in the shortest possible time. In many instances this translates to a much greater readiness to express dissatisfaction when the delivery of a course doesn't match up to expectations or when there is a perception of having been dealt with unfairly in terms of assessment or in other processes. Whether or not students may rightly be called "consumers", it is indisputable that they are more ready and willing than their predecessors to expect a high level of service and accountability from their higher education provider. It is ever more important that universities place great emphasis on 'getting it right' and in ensuring that their processes and procedures are transparent, fair and consistent, and accommodating of diversity. This is as it should be. Student ombudsmen play a vital role in this process, both in their investigations of requests for assistance and in their recommendations on systemic matters. This presentation considers the challenges faced by the presenters as student ombuds in an Australian university. It contrasts their 'last resort' model of student ombud with models used in other Australian universities and those in comparative jurisdictions, and considers which may be best suited to today's climate of higher education.

Introduction

The resolution of student complaints and grievances is central to the effective execution of teaching and learning, the core function of a university. In the last decades the student demographic on Australian campuses has undergone significant change, beginning with the introduction of "free education"³ and continuing with the introduction of full fee paying courses and

¹ The Higher Education Contribution Scheme (HECS) is a programme run by the Commonwealth Government to support Australian citizens undertaking university study. The HECS scheme operates as a loan from the Commonwealth government to pay for the cost of a student's course.

² McInnes C and Hartley R, *Managing Study and Work: The impact of full-time study and paid work on the undergraduate experience in Australian universities* (2002) Department of Education, Science and Training <http://www.dest.gov.au/archive/highered/eippubs/eip02_6/eip02_6.pdf> at 15 February 2011.

³ In 1972 Gough Whitlam was elected Prime Minister on a slogan of "It's time". Whitlam and his Labour Government introduced several significant changes to Australian society including withdrawal of troops (and the cessation of conscription) from the Vietnam War, lowering of the voting age from 21 to 18, repeal of the death penalty for federal crimes and the abolition of tertiary fees. This enabled

the international education industry. Today, there is an altered perception of what is a university and a university education, and there is a high cost to obtaining a degree. It has been said that students of today no longer consider themselves to be members of the 'studium generale' engaged in the pursuit of higher learning, but are customers or consumers⁴ pursuing a "better future" in terms of career opportunities and standard of living. It is argued perhaps rightly that the application of the term 'consumer' and all that entails in terms of the rights and responsibilities of the student and the university 'supplier' is problematic.⁵ However, there is no doubt in the minds of most Australian academics and university administrators that times have changed.

Universities now actively advertise their flexibility to enable students to work and study. They emphasise their accessibility in terms of proximity to business districts, their on-line delivery of subjects and acceleration of courses for maximising the added value to career advancement. It is argued that this is all at the expense of the 'campus experience'. Coupled with this consumer-oriented approach is the expansion of study options offered by universities through newly created degrees, specialised courses within faculties and postgraduate programs. The result of all of these initiatives is a competitive market place where higher education providers vie for the student dollar. The role of the student as a sophisticated purchaser of knowledge and skills with a willingness to call providers to account has led to the introduction of student charters and greater attention being paid to rights and responsibilities within the university/student relationship.

All universities have detailed policies and procedures relating to student appeals and grievances, and for many universities these are subject to regular review to keep abreast of changing expectations and circumstances. In a study⁶ completed in 2007 (the Project) the researchers recommended strongly that the emphasis be placed on the effective management of these procedures and on the thorough training of all staff involved with students – from academics to student centre officers and faculty administrators.

The Project asked questions in the survey and in interviews with students, staff and student association representatives about their knowledge of the existence and the role of the student ombuds in investigating complaints, known in some universities as 'requests for assistance'.⁷ In addition, the

young people who would not otherwise have been able, to attend university and expand their career options. Many of these students were the first generation of their families to attend university

⁴ Farrington D & Palfreyman D (2006), *The Law of Higher Education*, London, Oxford University Press.

⁵ Kaye, T, Bickel T & Birtwistle T 'Criticizing the image of the student as consumer: examining legal trends and administrative responses in the US and UK' (2006) 18 (2-3) *Education and the Law*, 85; Kamvounias P & Varnham S 'Getting what they paid for: consumer rights of students in higher education', (2006) 15(2) *Griffith Law Review*, 306.

⁶ Jackson J, Fleming H, Kamvounias P & Varnham S, *Student Grievances and Discipline Matters Project: Good Practice Guide for Handling Complaints and Appeals in Australian Universities* (2009).

⁷ For example, at UTS when a student with a complaint visits the office of the Student Ombud they are first asked to complete a 'Request for Assistance' form before their matter can proceed.

researchers also asked survey participants and interviewees whether they thought there should be an independent body for the investigation of student complaints against all universities.⁸

Ideally, proper attention should be paid to adherence to course requirements, rules and bylaws set out in material such as university handbooks and calendars, subject and course outlines and guides, and on university websites in relation to assessments, recognition of prior learning, enrolment, assessment and accommodation of special needs. Such compliance should lead to a happy student body, satisfied that they have been accorded fairness and justice. Unhappily, that is not always the case and there will always be students who wish to take matters further.

This paper will consider briefly the external avenues for complaint which currently exist and, also briefly, outline the findings and recommendations of the Project '*Student Grievances and Discipline Matters in Australian Universities*', mainly insofar as they relate to the university and external ombudsmen. It will then proceed to discuss the role of the Student Ombud at Australian universities followed by a comparison between the UTS Student Ombud and the different models of student ombuds in Australian universities. The authors next discuss their own experiences as Student Ombuds at the University of Technology, Sydney, in terms of any trends in the types of students and the matters in which their assistance is currently sought. They will conclude by asking the question whether there should be an external body dedicated to the investigation of student grievances based on the United Kingdom model of the Office of the Independent Adjudicator for Higher Education.⁹

Previously, following the United Kingdom model, students at older Australian universities¹⁰ had recourse to the university Visitor. This was an independent body (such as a State Governor) who was charged with the responsibility of investigating and hopefully resolving complaints.¹¹ Now where the position of Visitor remains, the role is generally ceremonial only. The gap left by this change may arguably have led students to look to avenues outside the university in their quest for resolution of their problems.

External Avenues for Complaint

⁸ Such as the Office of the Independent Adjudicator for Higher Education, introduced in the UK in 2004.

⁹ This question was raised early after the establishment of the UK office by Olliffe B & Stuhmcke A in 'A National University Grievance Handler? Transporting the UK Office of the Independent Adjudicator for Higher Education (OIA) to Australia' (2007) 29(2) *Journal of Higher Education and Policy Management*, 203

¹⁰ Known as the 'Group of Eight', which includes the University of Sydney and the University of Melbourne.

¹¹ For a discussion of the Visitor in Australian universities, see Kamvounias P & Varnham S 'Legal Challenges to University Decisions Affecting Students' (2010) 34 (1) *Melbourne University Law Review*, 140, 147-150.

A student with a grievance may request an investigation of their complaint by the State, Territory or Federal Parliamentary Ombudsman. There are 39 public universities in Australia and two private universities, Bond and Notre Dame. Each university in Australia, with the exception of the Australian National University situated in Canberra in the Australian Capital Territory, is constituted under State or Territory legislation and thus within the jurisdiction of the State (or in the case of the Northern Territory) Territory Ombudsman. These bodies investigate a not-inconsiderable number of matters every year as set out in their annual reports.¹² In 2005, in response to concern about the rising number and complexity of complaints from university students, 7 State Ombudsmen wrote a joint letter to "*The Australian*" national newspaper.¹³ In addition, about the same time, the New South Wales and Victorian Ombudsmen issued guides for best practice for university complaint handling.¹⁴ Anecdotally, many universities throughout Australia are reviewing their internal policies and procedures in light of these guides.¹⁵

In addition, a number of unhappy Australian university students every year apply for redress to a state or federal court or tribunal. This may be in private law, for example, in negligence or under the relevant consumer protection statute or equal opportunity or non-discrimination legislation. Alternatively they may make application for judicial review of the university decision, although the High Court of Australia, in *Griffith University v Tang*¹⁶ brought the availability of this action into doubt, at least for students in Queensland and the Australian Capital Territory, Similarly, in contrast to the situation in comparative jurisdictions¹⁷, and while there is an implied acceptance, there is

¹² For example, the 2008/2009 NSW Ombudsman Annual report cites 35 complaints against NSW universities out of a total of 589 complaints. See http://www.ombo.nsw.gov.au/publication/PDF/annualreport/08-09_AR/Ombo%20Annual%20Report%2008-09.pdf.

¹³ Bruce Barbour et al, 'Complaints Give Rise to Concern', *Education, The Australian* (Sydney), 27 April 2005, 34.

¹⁴ New South Wales Ombudsman, *Complaint Handling at Universities: Best Practices Guidelines*, (2006); and Ombudsman Victoria, *Review of Complaint Handling in Victorian Universities* (2005). These have now been supplemented also by a Good Practice Guide written following the report of the researchers the Project "*Student Grievances and Discipline Matters in Australian Universities*".

¹⁵ As Student Ombuds the writers are members of a national university complaint handling group which circulates discussion around its members surrounding such reviews. In addition, Associate Professor Sally Varnham is the Chair of the UTS Academic Board and as such is also involved in discussion in this area.

¹⁶ (2005) 221 CLR 99. For a discussion of this case see Kamvounias P & Varnham S 'Doctoral Dreams Destroyed: Does *Griffith University v Tang* Spell the End of Judicial Review of Australian University Decisions?' (2005) 10(1) *Australia & New Zealand Journal of Law and Education*, 5; Aronson M 'Private Bodies, Public Power and Soft Law in the High Court', (2007) 35 *Federal Law Review*, 1; Gangemi M '*Griffith University v Tang*: Review of University Decisions Made "under an Enactment" (2005) 27 *Sydney University Law Review*, 567.

¹⁷ Such as New Zealand in *Grant, Woolley, Staines & Grant v Victoria University of Wellington* (High Court of New Zealand, Wellington Registry, Unreported, Ellis J, CP 312/96 13 November 1997); and in the United Kingdom in *Clark v University of Lincolnshire and Humberside* [2000] 3 All ER 752.

no definitive judicial statement in Australia which firmly puts the university/student relationship on a contractual basis. University/student litigation has been thoroughly explored elsewhere¹⁸ and apart from a reference here, as being integral to a discussion of student grievances generally, it is beyond the scope of this paper.

In response to mounting concern arising from a perception of increasing numbers of dissatisfied students seeking external recourse, research was conducted in Australia from 2007 – 2009. The Project, '*Student Grievances and Misconduct Matters in Australian Universities*', had as its terms of reference a wide-ranging consideration of appeals, grievances and complaint handling at Australian universities. The findings of that project are now outlined briefly.

'Student Grievances and Misconduct Matters in Australian Universities' (The Project) – what did it tell us about the Student Ombud?

This was an Australia-wide research project undertaken with funding from the Australian Learning and Teaching Council. Its terms of reference were wide ranging and the research was conducted by way of evaluations of university websites which provide for student information, and surveys and interviews of students, student association members, academic staff and administrators in fourteen universities across a range of characteristics – public and private, city and rural, old¹⁹ and new.²⁰ The purpose of the project was to gain a better understanding of why and how conflicts arise between students and universities and why, in some cases, they escalate into external complaints or litigation. The project team had survey responses from more than 1500 students and more than 500 staff. They also interviewed more than 90 staff, students and student bodies, and reviewed university policies.

Nearly 50% of interviewees perceived that numbers of student complaints had increased overall in the last 3 to 5 years. The small number of interviewees who identified a steadiness or a decrease in complaints attributed that to an improvement in university processes. Others who disagreed that complaints had increased said that this was only a perception which was fed by publicity, rather than hard evidence. A number of interviewees agreed that students often felt that complaint processes are biased and not sufficiently independent.

¹⁸ See for example, Kamvounias P & Varnham S 'Legal Challenges of University Decisions Affecting Students' (2010) 34 *Melbourne University Law Review*, 140; Varnham S & Kamvounias P 'Unfair, Unlawful of Just Unhappy? Issues surrounding complaints of discrimination made by students against their universities in Australia' (2009) 14(1) *Australia and New Zealand Journal of Law and Education*; Astor H "Why do Students Sue Australian Universities?" (2010) 21 *Australian Dispute Resolution Journal* 20.

¹⁹ The 'Group of Eight' universities, for example, University of Sydney, University of Queensland.

²⁰ Universities which belong to the Australian Technology Network (ATN), for example the University of Technology, Sydney, Queensland University of Technology; and other newer universities, generally in rural areas, for example Southern Cross University, Charles Sturt University.

Interviewees were asked to rate what they believed to be the underlying causes why students are more likely to pursue complaints. A large proportion agreed with the following propositions:

- students see themselves as consumers (90.7%);
- students have higher expectations of universities (86.3%);
- students are more persistent about pursuing complaints because they have much more at stake (85.8%).

Interviewees cited a number of reasons for this, such as “students have a clearer idea of where they are going and are more career focussed”. In particular, some interviewees felt that international students possessed a “different sense of entitlement” and had a consumer-oriented attitude to university study.²¹

In relation to the survey questions and those asked of interviewees, the research revealed a perception among students and student associations that in some cases the student ombud lacked independence. However, from the survey and interviews the researchers formed the view that student ombudsmen can play a valuable part in the resolution of student grievances. The report recommended as follows:

- Universities should take steps to ensure that student ombuds can act in a manner that is ‘frank, fearless and independent’. This may involve clearer documentation about the role and ensuring that the person in the role is not, and is seen not to be, placed a position of conflict of interest;
- A person appointed as student ombud to conduct independent investigations should be appropriately qualified and trained to undertake this work;
- Universities should measure the success of student ombuds not only by reference to the annual report of that office, but also through feedback from other sources such as students and student associations.²²

The researchers recommended that there be further research into the different models of student ombudsmen used in Australian universities. The aim of this research would be to investigate whether in fact the ‘investigation and recommendation’ model used by most universities is the most appropriate to the higher education environment. It may be that the model of the person who is able to act as a ‘go-between’ at any stage of the complaint process may lead to a more effective, efficient and just result. There is also merit to taking a closer look at the UK model of the Independent Adjudicator for Higher Education as a dedicated independent body for the investigation of student complaints. It may be that there are constitutional limitations which

²¹ Jackson J, Fleming H, Kamvounias P & Varnham S ‘*Student Grievances and Discipline Matters Project – Final Report to the Australian Learning and Teaching Council*’ (2009), 54.

²² n 24, pp 84-85.

would preclude such a concept in light of Australia's federation, but this could warrant closer investigation. It is of interest to note that since this 2009 report there has been a Private Member's Bill introduced into the Australian Commonwealth Senate for this purpose. The Bill is discussed later in this paper.

Meeting the Changes - The Student Ombud at UTS

The first student ombudsman in Australia was appointed in the 1970s by the University of New England. In the late 1990s the Student Ombud Office was established at UTS. Since then quality assurance impetus has seen similar offices being created in a significant number of Australian universities, particularly the newly established institutions.²³

The Student Ombud at UTS is restricted to dealing with requests for assistance from students, not university staff. Investigation of staff matters may only be relevant insofar as they relate to the student's problem. If the complaint was, for example, to do with sexual harassment or abuse, a situation which may potentially involve staff misconduct and result in disciplinary proceedings, the Ombud would refer the matter for investigation to the appropriate body within the University.

Currently there is one Student Ombud and three Assistant Student Ombuds. Their positions are filled from the ranks of University academics who have been appointed through an expression of interest and interview process. The appointment is usually for two years with a one year extension. Student Ombuds are given a half-teaching load during their term. The Office is supported by an office administrator who works on a part-time (3 days a week) basis.²⁴

In some situations the appointment of academics may be perceived as giving rise to a conflict of interest, or at the very least, 'buddyism'. The office administrator is careful to avoid this problem by ensuring that requests from students within faculties are never allocated to an ombud from the same faculty. The principles of confidentiality and impartiality which bind all ombudspersons are carefully observed. While an ombud may discuss a matter with another, and may ask his or her advice, strict confidentiality is sacrosanct.

The UTS Student Ombud is modelled on the public administration watchdog, the Parliamentary Ombudsman, in that its primary function is investigation and recommendation. However, the UTS Ombud's Terms of Reference, at the core of the Unit's function, do provide for a wider brief than purely as a fact-finding body ready at the end of an investigation to take one side or the other and push for a resolution according to whether the complaint has been substantiated. In reality, far more time is being spent working with

²³ For example, those universities in the group known as the 'Tech 8' (of which the University of Technology, Sydney (UTS) is one).

²⁴ In other Australian universities, the Student Ombud or Dean of Students will not be appointed from the ranks of teaching academics, for example, La Trobe or Macquarie Universities.

management and administration to make sure that correct procedures are in place and followed to ensure that student complaints do not arise. When the investigation uncovers a systemic issue or problem it may make a recommendation, not only in respect of the particular student involved, but also for systems and procedures to be changed for the future. For example, in one matter, a student with special needs was granted permission to sit his exam on a computer in a room set up for that purpose. At the conclusion of the exam he was required, as was the practice, to save his work on a USB stick and submit that with his exam slip to the supervisor. There were no printers in the room so the student was not able to view his hard copy before submission and he was unsure of whether he had answered all the questions. Following the investigation which determined that in fact he had answered all the questions so no further action was recommended, the Ombud deemed that this practice was nevertheless potentially disadvantageous to students and recommended to exams branch of the university that printers be installed in the rooms used for this purpose and students be allowed to print their scripts before submission. This recommendation has been put in practice.

As is the case with the public administration model, the UTS Ombud will only investigate a matter when satisfied that the student has exhausted all procedures available under the University rules and bylaws. There is no jurisdiction to investigate complaints which relate primarily to academic judgement but rather when the student alleges breach of procedure, where the university has failed to follow its own rules in relation to assessment or there are facts which indicate unfair or unequitable conduct by an agent of the university.²⁵

It is not the role of the Student Ombud to advocate for the student, but to investigate the student's request for assistance and make a recommendation based on the outcome of the investigation which may or may not accord with the desired outcome asked of the student at the initial interview. This is made clear to the student at the initial interview. However, while on paper the Ombud's role is investigatory only, in reality there are instances where the Student Ombud may in fact facilitate a resolution by playing an informal mediation role. It has been our experience, as well as others in the position, that a positive and respectful relationship with faculty members and university administrators is crucial to achieving a fair and reasonable outcome, even if it is not the student's desired outcome.

A formal request for assistance is lodged by a student completing a form and the matter being allocated to one of the Ombuds to begin their investigation. Generally, it is the experience of the Ombuds that the faculties, particularly at the senior level, are generally co-operative and helpful during the investigation and they put best interests of the student uppermost. The faculty person most likely to be contacted at the first instance is Associate Dean (Teaching and Learning) who is well versed in faculty rights and responsibilities and policies and procedures. It has been the case however in some instances that the tutor or lecturer concerned, often employed on a casual or part time basis,

²⁵ For specific matters, such as those relating to the accommodation of special needs of a student, the Ombud will work together with the Equity and Diversity Unit of the University.

may have less knowledge and experience in this area and may be less co-operative and more intractable in their position. This is likely due to a concern that the student criticism is a personal attack on the academic and that such criticism may have an adverse effect on tenure and promotion.

The Student Ombuds Office also receives large numbers of what are termed 'informal complaints' which may be directed to the right person for resolution and a full investigation is not required. The office administrator is highly experienced in directing students to the most appropriate person or place for the opportunity to have their concern resolved. If unsuccessful, the student is then able to access the services of the Student Ombuds Office. The number and nature of informal complaints are discussed later in this paper.

Comparison with other university models

The UTS 'last resort' model of student ombud is in contrast to some Australian universities, notably the Australian National University in Canberra, and Macquarie University in New South Wales which have an alternative model known as the Dean of Students. The Deans consider themselves more an office of 'first resort' in that, rather than being confined to conducting investigations, they are there to give advice and, if necessary, to help the student negotiate or to mediate a resolution which is as far as possible satisfactory to all concerned.²⁶ Other universities have persons or committees who are named as, and are more in the nature of, Complaint Managers and Grievance Officers. Other models include Academic Registrar, Manager Student Affairs Unit and Dean's Advisory Service.

A review of university websites carried out as part of the research project: 'Student Grievance and Discipline Matters in Australian Universities'²⁷ revealed that of the 11 Student Ombudsmen in Australian universities which all have investigation as their primary function, the holder of the position also gave students support and assistance in a number of situations, 5 acted as facilitator and 2 as mediator. From this it is clear that while student ombuds may have terms of reference many are flexible in their approach to the many and varying situations which confront them. Although the core business of the above agencies is student complaints and grievances, the term Ombudsman is intended to be used by agencies that meet the six essential criteria set out by the Australian and New Zealand Ombudsman Association (ANZOA), being independence, jurisdiction, powers, accessibility, procedural fairness and accountability.²⁸

²⁶ Oakes P 'Someone to turn to: working towards a warm-blooded university' Paper presented at *It's Academic: A National Student Ombudsman for Australian Universities – Managing Student Grievances and Discipline in the University of the 21st Century*, Byron Bay, New South Wales, Australia, 4-5 December 2008. May be retrieved at <http://www.altcexchange.edu.au/system/files>

²⁷ Jackson J, Fleming H, Kamvounias P & Varnham S 'Student Grievances and Discipline Matters Project – Final Report to the Australian Learning and Teaching Council' (2009). 18

²⁸ ANZOLA Policy Statement, February 2010. See <http://anzoa.com.au/ANZOA%20Policy%20Statement%20Ombudsman%20Essential%20Criteria%20Feb2010.pdf>

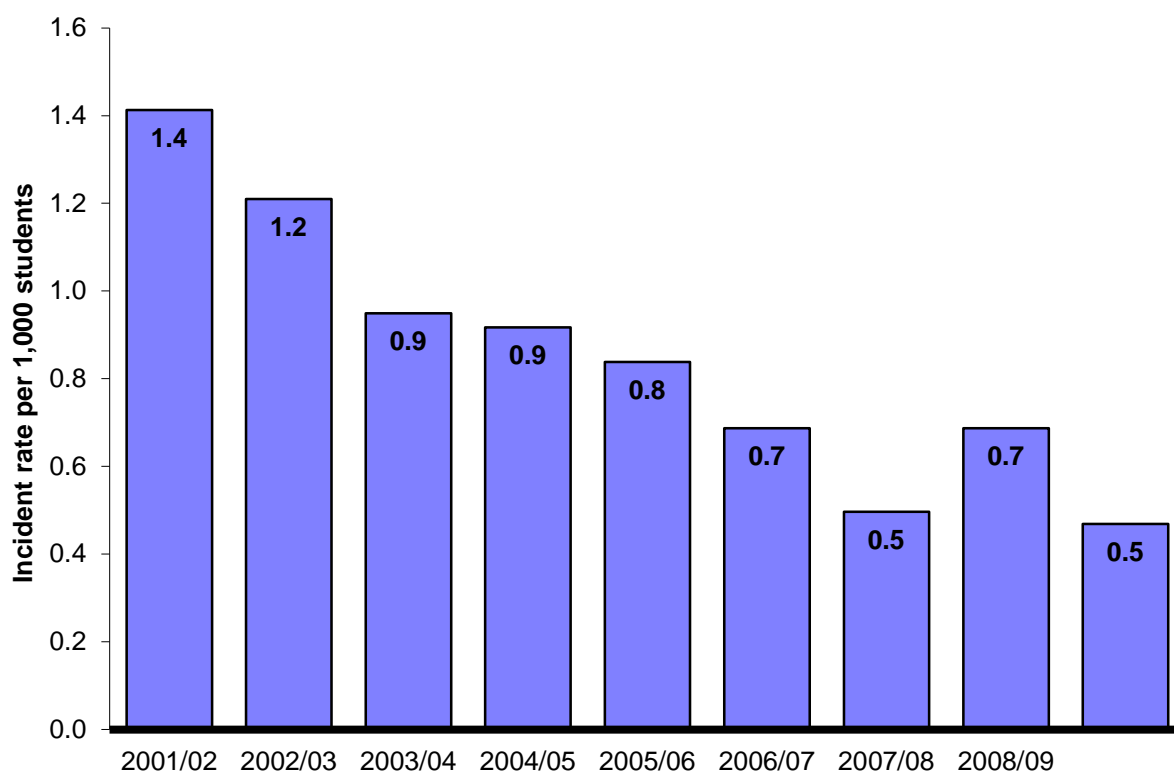
The UTS Ombuds' experience

At UTS, the numbers of formal complaints since 2006 are as follows:²⁹

2010	15
2009	14
2008	22
2007	16
2006	22

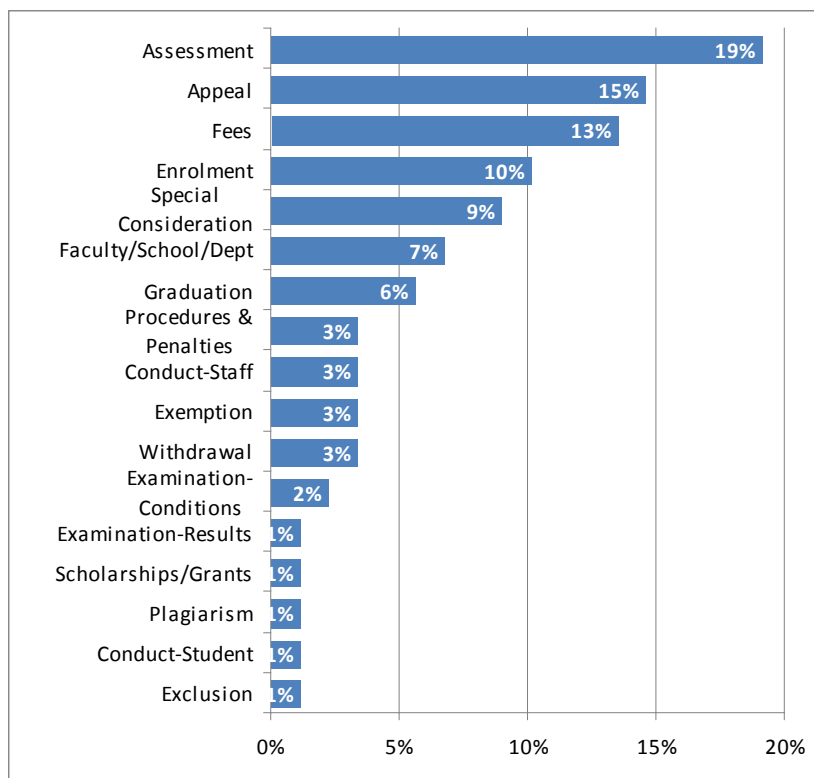
Trends in Formal Request for Assistance

The above shows a slightly declining trend in the number of formal complaints since 2002. We believe that this had been in part due to the ongoing success of the UTS grievance handling training modules that were run by the UTS Equity and Diversity Unit. An essential aspect of the training modules was for participants to recognise the importance of dealing with grievances quickly, at the lowest possible level, or making appropriate referrals.



Assessment, Appeal, Fees, and Enrolment make up the major complaint categories of the Office over the last 5 years. Assessment 19%, Appeal 15%, Fees 13%, Enrolment 10% while Special Consideration 9%, Faculty 7% and Graduation 6% make up a further 22% to be 79% of the Offices complaints. These 7 items are the core Office complaint categories.

²⁹ This material is taken from the Annual Reports of the UTS Student Ombud available at .



In addition to the formal requests for assistance above, the Student Ombud office deals with larger numbers of informal requests or complaints, as below.

2010	69
2009	73
2008	80
2007	61
2006	69

The numbers of informal requests for assistance has remained relatively stable. In past years higher numbers of informal requests for assistance have been attributed to international students seeking help for fee related problems or advice, however since 2006 and 2007 there has been a marked decrease. In 2010 there were 6, in 2009 there were 14 and in 2008 there were 20 informal requests for assistance from international students. The majority of the approaches from international students were from prospective students seeking information about courses. The decrease has been attributed to better targeted information on web sites and by the increased presence of the International Programs Office.

The remaining informal requests for assistance covered a wide range of complaint categories. These students were directed to Student Centres, other UTS grievance handling units, such as Equity and Diversity, Student Services, such as counselling; the library, security or to the Students Association.

Unfair, unhappy or unwell?

The most notable trend in recent years has been in relation to the types of students requesting the assistance of the Student Ombud. During the course of 2008, a disturbing proportion of requests for assistance were received from

students exhibiting signs of mental illness. These signs included depression, paranoia, threats of self-harm including contemplation of suicide, obsessive and unreasonable behaviour, threats to staff, and behaviour that may occasion disciplinary action under University Rules for non-academic misconduct. Other students requesting assistance were currently receiving treatment for just such conditions. Some students were of the view that the reason for their mental health issues was the poor management of their complaint by the University. Some of the students with pre-existing conditions also attributed what they felt was poor management of their complaint to contributing further to their discomfort. While this was not the case to such a degree in 2009, in 2010 there were once again a significant number of requests for assistance from students who appeared to show signs of mental illness. While it is not possible to conclude that this observation is the beginning of a trend, it nevertheless it cannot be ignored and is of great concern. The prevalence of mental illness in students with grievances was also made by Astor in her research into cases of student litigation against universities between 1985 and 2006.³⁰

There has also been an increase in the number of requests for assistance from international students. While this is a likely result from the rise in international student enrolments³¹, it is our personal experience that international students present as having a higher degree of urgency and emotional “burn-out”. During the initial interviews with these students, they consistently express concerns around family expectations, fees and visas. Our observations are reflected in the federal government’s recognition of international students’ concerns with the establishment of the Overseas Students Ombudsman (OSO) in April 2011.³² The OSO has jurisdiction only over private education providers which include some private universities such as Notre Dame and Bond. Registered education providers must have an internal complaints handling and appeals process for overseas students under Standard 8 of the *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007* (the ESOS Code). Under this Code education providers must advise students of their right to access an external complaint and appeals process if they are not satisfied with the internal complaint process or outcome, this is now the OSO in the case of private providers, and the state, federal or territory ombudsman in the case of public universities and schools.

There is a much greater realisation now that students are generally busier and more stressed than the students of before and it is clear that the latter day student is quite unlike the full-time, always-on-campus, straight-from-high-school student of past decades. There has been a shift towards time-poor students with the growing socio-economic pressures to work to finance their

³⁰ See Astor. n 7.

³¹ International students’ enrolments increased up until 2009 with a slight decrease in 2010. See the Federal Governments’ Australian Education International statistics at <http://aei.gov.au/AEI/AboutAEI/Default.htm>

³² Established by *The Education Services for Overseas Students (ESOS) Legislation Amendment Act 2011* as an office within that of the Commonwealth Ombudsman.

increasingly costly studies and the rising cost of living. All students, but particularly international full fee-paying students, are under great pressure to gain their qualifications in the shortest time possible. They have two competing pressures on their time: outside work and their university studies. The trend, perceptible by current academics and the UTS Student Ombuds, that students are under considerable pressure to get in, get qualified and get out, easily translates to a much greater willingness to complain when they feel that their chance of doing that is compromised.

This background gives rise to the question: should there be a dedicated national student ombudsman for Australia?

An external national student ombudsman for Australia?

The possibility of a dedicated external national student ombudsman had been canvassed in Australia for a number of years and it was in fact proposed by the Senate Committee on Higher Education as far back as 2001 to:

...ensure faster, more successful resolution of complaints and ... better acceptance of agreed outcomes. (It) would also provide useful feedback on any systemic issues in specific universities or the sector as a whole.³³

It was not the intention of the researchers in the Student Grievances project to make specific recommendations relating to whether or not there should be an external national student ombudsman. However, because of this earlier proposal, and the establishment three years later of the Independent Adjudicator of Higher Education in the UK, it was inevitable that the question arose during the research.

While staff questioned in the surveys and interviews had confidence in the kind of informal dispute resolution offered by student ombudsmen, they were much likelier to have strong reservations about a national student complaint-handler similar to the British model.³⁴ It was seen by many as adding another layer to the already existing 'complex web' of external fora which already exist in Australian states and territories and the Commonwealth. This view is contrary to that of the UK's first independent adjudicator of student complaints, the Baroness Ruth Deech. In her belief, the vast expansion of higher education and the scale of the overseas student market were strong arguments for specialist, independent student ombudsmen at state or federal level. She said:

³³ Senate Committee, 2001, 136, referred to in Jackson J, Fleming H, Kamvounias P & Varnham S *'Student Grievances and Discipline Matters Project – Final Report to the Australian Learning and Teaching Council'* (2009), 81.

³⁴ Although it is important to note that two-thirds of student associations, however, supported the idea of a national ombudsman.

There's a lot to be said for a specialist education service at a high level to try (to) head the students away from litigation. I find it a bit odd that education disputes are dealt with by an ombudsman [in Australia] whose time must be very largely taken up with government and other consumer disputes."³⁵

In the study, those who did express support for such a dedicated body did so on the basis that such a body with wide oversight and completely independent of universities, would best be able to identify and address systemic problems as well as individual disputes. However, the point was made that the body would need to be properly funded and resourced in order that it not end up as a 'toothless tiger'.

In 2010 reports of two Federal Government inquiries into higher education in Australia were published. The Bradley Report took a wide ranging view of the current state of the sector and made a series of recommendations which are currently being considered. The Baird Inquiry was commissioned following concern relating to the international student 'industry'. This latter report recommended the establishment of a body dedicated to investigating complaints of breaches of the *Education Services for Overseas Students Code* and this has in fact been implemented with the establishment of the Overseas Students Ombudsman.³⁶ However, following the publication of this report Senator Hanson-Young introduced a Bill into the Senate, the *Ombudsman Amendment (Education Ombudsman) Bill 2010* with a much more comprehensive purpose. It aimed to establish an Education Ombudsman as a separate office within the office of the Commonwealth Ombudsman to deal with the domestic education sector also. In the Explanatory Memorandum it states that an office so established would: 'act as a one-stop national authority for resolving individual student complaints' and furthermore, have a wider brief of 'monitoring and enforcing compliance of educational institutions, and facilitating communication between state and federal governments and educational organizations'. This Bill is yet to be read for the second time but it is thought that it will not progress in light of the subsequent establishment of the OSO.

Conclusion, Challenges and Opportunities

A recurrent theme of the Project, and indeed the view expressed by other research in the area, is that there is definitely a shift in student attitudes, particularly apparent since the introduction of full fee paying courses.³⁷ Interviews with staff revealed that many of them find it difficult to reconcile the new attitude with the historical concept of universities as places of higher learning within a scholarly environment. This trend is set to continue with the Federal Government's proposal to lift participation levels at universities. Its

³⁵ Bernard Lane, *The Australian Higher Education Supplement*, 10 December 2008.

³⁶ Discussed above.

³⁷ This view is also reinforced in discussion with other university ombuds, deans of students and university complaint handlers throughout Australia.

goal is to have 40 per cent of the population aged 25 to 34 to attain at least a bachelor-level qualification by 2025. The purpose of this paper is not to consider the ability of students to academically manage university study, however, there can be no doubt that higher enrolments will result in additional complaints and grievances. The impact of a more diverse student body will be greater in some universities more than others.

It is a matter of concern whether the model of “last resort” will be the most appropriate one to manage the challenges arising in the new order. This is evidenced at UTS perhaps by the rising numbers of ‘informal’ complaints. It may become desirable that the offices of student ombuds have a pro-active presence in assisting and supporting students with information and directions as to how to exhaust all avenues before reaching the stage of formal complaint.

The issue of student depression is gaining recognition across Australian universities. It is our experience that significant numbers of the students who seek the assistance of our office are suffering from psychological or emotional problems and the research bears this out. What is unknown is how many students we do not see because they simply drop out, overcome by study related problems. Further research as to the causes of depression in students should ask the question whether what is needed is, in the words of the Dean of Students at ANU, ‘a warm body to turn to’ in a student ombud or similar agency which can assist and advise students with course problems. In many of these cases, is the “last resort” model a potentially harmful one?

These questions aside, today’s challenges create opportunities to improve the university experience for all. The need for effective management of procedures and training of staff is highlighted in the research project and by our experience. The picture of academics as silos of autonomy and academic freedom is less apparent now with the expansion of sound pedagogical practices in teaching and learning, such as alignment of objectives, content, assessment and feedback, the giving of both summative and formative feedback and the embedding of graduate attributes. Themes of accountability and consistency that have emerged in teaching and research practices, we believe, are transferable to student communications and relations.

Currently, internal student ombuds, however their role is defined, play an essential role when the inevitable mismatch in expectations arises, or when a student feels that proper policies and procedures have not been adhered to. Their existence ensures that the matter can be independently investigated and where it is substantiated, that a satisfactory resolution is reached. Furthermore, the making of recommendations when an investigation reveals systemic failures is crucial to the integrity of the teaching and learning process, the core function of universities.

There can be no doubt that Australian universities are now faced with much greater requirements of accountability. This accountability comes from two

directions: from the Commonwealth government in return for funding,³⁸ and, increasingly, from students.

The NSW Ombudsman had this to say about the latter:

Accountability does not require academic standards to be lowered. It does not mean that students' unreasonable expectations have to be fulfilled.. What accountability means is that processes have to be transparent [and] ...that students need to be told what to expect from university life, in particular, how they are to be judged academically. And, more importantly, they must be judged in accordance with those standards.³⁹

All students have the right to be treated fairly and equitably, and in accordance with published procedures. The Student Ombud is there to ensure that this happens. Its role is to take up the challenges and opportunities of a changing and diverse student population with impartiality, independence and transparency.

³⁸ Although Australian public universities are constituted under state and territory legislation, they receive their funding from the Commonwealth government pursuant to the *Higher Education Act 2004*. The main vehicle for accountability is through cyclical reviews by the Australian Quality Assurance Agency (AUQA) which is concerned to see that universities have quality processes in place and that they achieve their stated mission and objectives. In 2011 AUQA is to be replaced by a new agency, TESQUA, the Tertiary Education Standards and Quality Agency.

³⁹ Barbour B, NSW Ombudsman, 'Handling Student Grievances: What Lessons are there for Institutions in the Cases Brought before the Ombudsman in Australia?' (2002) in *Responding to Student Expectations*, OECD Publications, Paris, France, 141-149, 143-144.