

Student Grievances and Discipline Matters Project

Final Report to Australian Learning and Teaching Council

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The University of Sydney



UNIVERSITY OF
TECHNOLOGY SYDNEY

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Jim has written widely in the field of higher education law including papers on governance, dismissal processes, compulsory student unionism, marketing law, academic freedom, legal rights of international students, speech rights and fiduciary obligations of university governing bodies. He has also written in the area of School Law especially in relation to disability, the right to education and linguistic rights in education.

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B. Key terms and meanings

ADR	Alternative dispute resolution, which is a term used to describe various ways of resolving disputes without resort to litigation. These include negotiation, conciliation, mediation and arbitration
ALTC	Australian Learning and Teaching Council
AUQA	Australian Universities Quality Agency
Cause of action	A fact or combination of facts that gives rise to a right of action by a person against another
Bradley Review	Review of Australian Higher Education – Final Report, published December 2008 (refer to the References Section at the back of this report for full citation)
DEEWR	Department of Education, Employment & Workplace Relations (and, where applicable, its predecessor(s))
ENOHE	European Network of Ombudsmen in Higher Education
ESOS Act	<i>Education Services for Overseas Students Act 2000 (Cth)</i> (as amended)
ESOS Code	National Code of Practice 2007 enacted under the ESOS Act
HESA	<i>Higher Education Support Act 2003 (Cth)</i> (as amended)
Natural justice (also called procedural fairness)	A legal doctrine designed to protect people against the arbitrary exercise of power, particularly by governments, government agencies, courts, tribunals and bodies or persons exercising statutory power. Natural justice is based on two fundamental rules: first, that any person who is affected by the decision must have a reasonable opportunity to present his or her case; second, that the decision-maker must act fairly and without bias
OIA	Office of the Independent Adjudicator for Higher Education (United Kingdom)
Student	This is given a broad definition, and includes postgraduate and undergraduate students, as well as international and local students. However, it does not include students enrolled in non-award courses, such as professional development or continuing education courses offered by many universities as part of their contribution to the broader community
Student grievance or discipline matter	A teaching and learning related complaint or appeal that may have legal or quasi-legal consequences within and beyond the university involving a student and his or her university. These include, for instance, appeals against grades, or disciplinary action taken by a university against a student for academic misconduct, such as plagiarism. This project is confined to grievances and discipline matters in a teaching, learning and assessment context. As such, it does not include, for example, disciplinary action arising out of behaviour outside that context, for example, theft of equipment. Likewise, a student complaint about the quality of food provided by a café on campus is not included.

A complaint or an appeal may arise in various ways, for example:

- Denial of natural justice or procedural fairness in relation to a university process, for example, a student appeal against a grade or student disciplinary proceedings;
- Failure of a teaching and learning experience to live up to the student's expectations or representations made by the university, including quality of academic staff, facilities and delivery of the curriculum; or
- Unlawful discrimination in the provision of educational services, such as denial of adjustments in assessments or inadequate access to student learning support

VSU

So-called “voluntary student unionism” – as introduced by the Federal Government from 1 July 2006 with the enactment of the *Higher Education Support Amendment (Abolition of Compulsory Up-front Student Union Fees) Act 2006* (Cth), which amended section 19-37 of the *Higher Education Support Act 2003* (Cth)

C. Executive summary

This project was funded by the Australian Learning and Teaching Council to review student grievances and discipline matters in the Australian university sector. This is an area that has, to date, received little attention in Australia in the context of quality in teaching and learning.

Many students at some time during their studies have had a grievance or been the subject of disciplinary proceedings. All Australian universities have internal procedures for dealing with complaints or student discipline matters – most of them made under internal statutes of the University.

It has been claimed that litigation and complaints to external investigative agencies (such as state and territory ombudsmen) against universities by disgruntled students are on the rise, particularly in a climate where higher education is now seen as more of a commercial enterprise. This is in the wake of reforms to higher education that have been taking place since the late 1980s.

The purpose of this project was to gain a better understanding of why and how conflicts between students and universities arise and, in some cases, escalate into external complaints or litigation. To that end, we reviewed relevant literature and cases to identify particular trends; surveyed and interviewed university students and staff across fourteen sample Australian universities; interviewed student advocates from sixteen student associations and interviewed three others external to the university sector to gain their perspectives about how universities handle student complaints and disciplinary matters. We also reviewed the complaints and appeals processes of all Australian universities (as made available through their websites) to test their accessibility and compliance with regulatory regimes, such as the ESOS Code.

As part of the project outcomes, we also organised a national conference on student grievance and discipline in Australian universities, which was held in Byron Bay in December 2008. Presenters from Australia and overseas (including Baroness Ruth Deech, DBE) gave their perspectives on the handling of grievances and disciplinary matters in universities in Australia and overseas. We also presented our key preliminary findings at that conference.

Common themes that emerged from this project include:

- (a) many university processes for resolving complaints and appeals are lengthy and complex and, in some cases, unnecessarily exacerbate complaints;
- (b) students are reluctant to complain (even informally) because of concerns about how this will affect their academic progress;
- (c) students (particularly undergraduates less familiar with processes) find it difficult to obtain information about how to raise concerns or lodge appeals. This can at times be exacerbated when staff give students inaccurate information, or because information published on university websites is out of date, or not particularly accessible or reader-friendly. Our review of university websites revealed a tendency by some universities to rely on their statutes and policy documents to convey information to staff, rather than through more reader-friendly means such as FAQ's and flow charts.
- (d) campus ombudsmen (or similar) are not generally perceived as independent sources of assistance for students;
- (e) university staff (particularly academic staff) do not receive adequate training on how to deal properly with complaints or appeals;
- (f) the way universities capture data about complaints and appeals differs markedly across the sector, which limits their capacity to quickly identify and address systemic problems. Only some universities have implemented university-wide systems. In many cases, data is captured by individual units responsible for handling particular types of complaints (for instance, complaints about unlawful discrimination);
- (g) although most students who feel aggrieved (even after their complaint or appeal is finalised) continue with their studies, this can damage a student's relationship with his or her university irreparably. However, there appears to be a sizeable attrition rate due to dissatisfaction after a complaint or appeal is finalised);

- (h) support from interviewees for a national student ombudsman was mixed among university staff and student association staff that we interviewed, although student association staff were more inclined to support the idea. Those who did not support it felt that universities should put more energy and resources into internal resources to try and resolve complaints at an earlier stage. Those who supported the idea felt that a national student ombudsman would put greater pressure on universities to improve their complaints and appeals mechanisms and provide a quicker and more cost-effective forum than courts and tribunals for dealing with complaints.

Our core recommendations include:

- (i) universities need to improve the way in which they communicate their expectations of students regarding their academic conduct and performance, and how students can raise complaints or appeals. Better website design, use of plain English language documents and staff training are all critical to achieving these improvements;
- (j) universities should, wherever possible, streamline complaints and appeals processes to remove unnecessary complexity and thus minimise the risk of procedural error;
- (k) universities need to implement records systems on a university-wide basis to capture data about complaints and appeals. This can lead to early identification and resolution of systemic problems, and may also address other issues, such as “forum-shopping” of complaints processes.

D. Summary of key conclusions and recommendations

Our key conclusions from the project can be summarised as follows:

- (a) From our review of universities' websites and policies:
- many universities do not locate or present information in a way which makes for easy navigation and accessibility for students;
 - universities are inclined to place too much reliance on their statutes, policies and procedures as a means of conveying important information;
 - the language used in many statutes, policies and procedures that we reviewed relied too heavily on the use of legal language or university jargon, and did not explain common university or legal terms;
 - there is disparity and inconsistency in internal processes for dealing with different types of complaints or appeals and, in some cases, too many stages within a process;
 - there are some inconsistencies within rules, or between policies and procedures underpinning them; and
 - the categorization by most universities of complaints or grievances as either "informal" or "formal" may be problematic because this may lead to unnecessary or inappropriate escalation of minor complaints to a formal stage.
- (b) From student surveys and interviews with students and student associations:
- many students do not know where, how or with whom to raise problems and have difficulty in accessing information;
 - students are frustrated at the complexity of processes and the length of time taken to resolve their complaints. There is widespread concern among students that university personnel are not prepared to listen objectively to their concerns and make genuine efforts to resolve them. For this reason, students who raise a complaint or concern quite often experience a sense of futility when they do so. This was made particularly clear in interview responses from international students which suggest that they experience difficulties in their relationships with university staff;
 - in relation to issues of plagiarism, there was a sense from those interviewed that students are often unclear about what is expected of them;
 - despite the fact that VSU was not a specific theme in our research, it emerged as a concern in terms of lack of funding of students' associations for advocacy and other services; and
 - there was some support for campus ombudsmen, but there were reservations about the level of independence.
 - student association interviewees generally supported the idea of a national student ombudsman, although some had reservations that this would just add another layer to already complex range of external forums for redress. However, there was an overall feeling that a national student ombudsman would act independently and could identify and address systemic problems across the sector.
- (c) From staff surveys and interviews, and external interviews:
- staff perceive that students more readily and persistently challenge decisions about assessment in a higher education environment;
 - although vexatious complaints are relatively rare, both academic and general staff expressed concern about unreasonable behaviour of students while pursuing complaints;

- lack of training, particularly for academic staff, in handling complaints and appeals stands out as a significant area of concern, particularly as it relates to adherence to existing internal processes by staff, their understanding of their roles and responsibilities, and the treatment of students throughout the complaints process; and
- support among university staff interviewed for a national student ombudsman, along the lines of the Independent Adjudicator for Higher Education in the UK, was also mixed for similar reasons identified by student association staff. Those who did not support this idea felt it would just add another layer to an already complex range of external forums for redress. They instead thought there should be more focus on improving university internal systems, including through greater use of alternative dispute resolution.

Our recommendations from the project may be summarized as follows:

- (d) In order to work towards minimizing complaints universities should set criteria that address best practice in their processes and protocols in relation to:
- the admission of students to courses and programs to enable a realistic assessment of a student's prospects of success;
 - the identification and management of academically "*at risk*" students;
 - user-friendly and clear documentation to enable agreement on the university's expectations;
 - the provision of up-to-date and accurate information to students, and training and information to staff;
 - consistent but fair application of policies relating to matters such as special consideration and credit transfer;
 - the provision to students of accurate advice in relation to concerns raised by them.
- (e) In relation to the use of websites for publicizing information about complaints and appeals:
- these should be easily and intuitively navigable with strategies such as hyperlinks, FAQs and flowcharts to convey information that can be easily understood by all students, particularly those whose first language is not English. The information should include:
 - ❖ names and contact details of key staff, including student advocacy services where available; and
 - ❖ links to external agencies such as state or territory ombudsmen and anti-discrimination agencies;
 - website information should be reviewed regularly to ensure currency;
 - in addition to websites, information should be available at faculty counters, student centres and at orientation programs;
- (f) In relation to the documentation for complaints and appeal processes:
- students should be encouraged to raise their concerns with university staff, and they should be made aware of the conduct expected of them in such a situation, and of what they may expect from the process;
 - statutes, rules and policies should be drafted in clear and plain language to enable a clear understanding of them for all involved. Jargon and legalese should be avoided where possible, or clearly defined;
 - the numbers of stages for dealing with complaints or appeals should be limited to no more than three or four where possible, while adhering to principles of natural justice;

- the conduct of investigations and decision-making functions should be vested in those with proper training and who can bring an independent and impartial mind to their role;
 - alternative methods of dispute resolution such as mediation should be made more widely available where appropriate, and information made available as to what the process involves and what students can expect from that process.
- (g) In relation to record-keeping :
- universities should implement centralised systems of record keeping for complaints and appeals in order to identify systemic problems and trends.
- (h) In relation to training and guidance for staff:
- complaints should be regarded by universities as an essential ingredient to quality teaching and learning. Universities should encourage feedback that identifies problems which need to be resolved as part of an overall cultural change;
 - universities should, as far as possible, ensure that *all* staff have sufficient guidance and training in matters of student appeals, complaints, concerns and academic misconduct to ensure an awareness of expectations and responsibilities in relation to students;
 - student ombudsmen should be properly trained, be scrupulously independent, and seen to be so by both staff and students. Their performance should be monitored through feedback from staff, students and student associations.

E. Acknowledgements

The project team thanks all students, university staff, student associations and others who gave so freely and generously of their time to participate in this project.

The project team also thanks all presenters and delegates who attended the conference, *its Academic - A National Student Ombudsman for Australian Universities? Managing Student Grievances & Discipline Matters in the University of the 21st Century*, which took place in Byron Bay, New South Wales, on 4-5 December 2008.

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- (a) Staff at the Australian Learning and Teaching Council who provided us with guidance and support throughout this project;
- (b) Baroness Ruth Deech, DBE, former Independent Adjudicator of the UK Office of Higher Education;
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- (g) John Fleming Centre for Legal Research, The Australian National University;
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- (i) Jane Nelson (Pro-Vice-Chancellor, Student Affairs), Marcia Graham (Head, Student Enabling Centre), Cindy Williams-Findlay (Equity and Diversity) and Sharon Hasluck (Head, Student Conduct and Appeals), University of Wolverhampton, United Kingdom; and
- (j) Joanne Luckett, Academic Quality Officer, University of Birmingham, United Kingdom.

Finally (and not least of all) the project team also thank:

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- (h) Christopher van Opstal, Research Assistant.

1 Chapter 1 – Overview of the project

1.1 Introduction

The aim of this project was to research, review, identify and scope student complaint and appeals procedures in across the Australian university sector. Appendix 3 to this report contains a list of all Australian universities included in this review.

Many undergraduate or postgraduate students have at one time or another had reason for making a complaint. Perhaps the course did not measure up to a student's expectations, or the student was dissatisfied with the grade he or she received, was refused a request for special consideration or felt unfairly disadvantaged by a misconduct process.

When this occurs, a student may feel that his or her learning and engagement with the curriculum has been compromised because of a perceived level of unfairness or mistreatment by the university. Inevitably, some students complain, while others simply move on. In some extreme cases, a student may leave the system. Conflicts with university faculties have been cited as one major reason why students leave graduate programs in universities in the United States (Nerad & Miller, 1996). Aggrieved students are less likely to integrate and identify with the values and processes of the university (Tinto, 1993), and may well leave. On the other hand, there are some students who are very aware of their rights and quite prepared to use internal processes (following a university's rules) and even perhaps use external legal mechanisms (such as ombudsman, courts or tribunal) to exercise those rights.

Quality learning and teaching includes quality in university internal procedures for dealing with student appeals/complaints. However, at the time of writing this report, there is no code, or set of principles and guidelines prescribed by the Australian Universities Quality Agency or Universities Australia (formerly the Australian Vice-Chancellors' Committee) in relation to the handling of student grievances and discipline matters.

1.2 Aims and objectives of research

The aim of this project is to assist Australian universities (and therefore ultimately benefit students) to improve their policies and procedures relating to grievance and discipline matters as a whole – rather than to compare or rank individual universities.

This research project involved:

- (a) examining grievance procedures of those Australian universities reviewed (see Appendix 3) and selected overseas institutions to ascertain and describe what constitutes good practice. In particular, the project examined procedures for ease of accessibility to students and compliance with relevant regulatory regimes, such as the ESOS Code and guidelines published by state and territory ombudsman, for instance, the *Complaint Handling at Universities: Best Practice Guidelines* issued by the NSW Ombudsman, December 2006, which apply to NSW universities;
- (b) examining the relevance and suitability of student grievance practice principles and procedures established by the UK Quality Assurance Agency's *Code of Practice for Assurance of Academic Quality* for Australian universities;
- (c) suggesting measures which may reduce the future incidence of student grievance or discipline matters in Australian universities by comparing and examining measures taken in overseas countries such as the UK and New Zealand;
- (d) providing examples (if these exist) of where the resolution or otherwise of student grievance or discipline matters has led to better university practice and procedures for dealing with student grievance or discipline matters;
- (e) testing all grievance procedures in Australian universities for compliance with best practice as identified above;

- (f) scoping the size and nature of student grievance and discipline matters in Australian universities, in particular, to:
 - ascertain the most likely context in which student grievance or discipline matters arise;
 - examine whether student grievances and discipline matters are related to discipline areas, modes or levels of study or types of educational delivery;
 - categorise student grievance or discipline matters by type and ascertain whether there is a *typical* student grievance or discipline matter;
- (g) examining the remedies provided by Australian federal, state and territory laws to university students arising in a grievance or discipline context and ascertain whether domestic and, in particular, students based overseas have reasonable access to fair and appropriate Australian legal remedies, such as those under the *Trade Practices Act 1974* (Cth), *Higher Education Support Act 2003*, the *Education Services for Overseas Students Act 2000* (Cth), Commonwealth state, and territory freedom of information laws, small claims tribunals and administrative appeals tribunals and ombudsmen ;
- (h) determining whether the quantity of litigation involving university students and arising out of a teaching and learning context is increasing in Australia;
- (i) examining the potential use of alternate dispute resolution methods in student grievance or discipline matters and consider whether Australia should implement a national dispute resolution model; and
- (j) identifying the extent of existing training programs in Australian universities that target the effective implementation of student grievance and discipline processes, and if these do not generally exist consider whether professional development is needed in this area.

1.3 Outcomes and deliverables for this project

There are five outcomes and deliverables for this project:

- (a) This report, which will be made available to relevant stakeholders in Australian higher education, including
 - the Australian Learning and Teaching Council;
 - all Australian universities;
 - all university student associations;
 - Universities Australia;
 - bodies representing various university professional groups, including the Society of University Lawyers, Ombudsmen and Deans of Students in Higher Education Australasia Association, Australian and New Zealand Education Law Association and the Association for Tertiary Education Management;
 - Australian Universities Quality Agency;
 - Department of Education, Employment & Workplace Relations; and
 - federal, state and territory ombudsmen;
- (b) Good practice guidelines on student grievances and discipline matters to be made available to the various groups mentioned above;
- (c) A publicly-accessible website at www.altcexchange.edu.au that will:
 - record progress of this project;
 - contain a full literature review and list of reported decisions of courts and tribunals involving disputes between universities and students;
 - include links, where these are available, to all relevant local and international reports, policies and practice;

- contain a series of resources for universities including guidelines and case studies of how to and how not to conduct student grievance or discipline matters; and
 - contain this report.
- (d) Organisation of a major conference on student grievance and discipline in Australian universities inviting presenters from Australia and overseas to give their perspectives on the handling of grievances and disciplinary matters in universities in Australia and overseas, as well as presenting our preliminary findings from this project; and
- (e) Publication of the results of the project in relevant journals or in a separate monograph.

1.4 Scope of project

The original scope of the project was divided into six phases.

Phase 1 was devoted to the appointment of a project officer, compiling a detailed list of literature and reported case law, collection of all publicly available university policies, rules and procedures relating to student complaints, conduct and other academic issues, such as special consideration. This phase was also used to develop a project website, including entry of data already obtained from our literature review and other information or links already obtained.

Phase 2 was to establish focus groups to inform the project team in relation to a number of issues relating to university processes, including internal university processes, including fairness, outcomes and remedies available, review and appeals processes. In addition, the focus groups would provide a forum for the project team to inform itself about experiences of students, university staff and student associations arising out of those processes.

Phase 3 was to administer a pilot survey instrument at participating universities, finalise ethics approval and select university participants to administer the survey.

Phase 4 was to analyse internal university policies, rules and procedures to test recognition of and compliance with principles of natural justice and other procedural matters. Phase 4 was also to review external avenues of review (such as courts, tribunals, state and territory ombudsmen) to test the nature and size of claims, student profile and the outcomes.

Phase 5 was to establish focus groups, after discerning the likely penetration to be achieved through the survey. The focus groups were to include representatives from appeals committees and academic boards, students, student associations, university lawyers and university ombudsmen.

Phase 6 was to analyse the survey and focus group responses and complete other project deliverables.

1.5 Variations to scope of project

Preliminary engagement during Phases 1 and 2 with university staff and student associations revealed it would be extremely difficult to gain accurate data from an appropriate sample about the actual number and type of complaints or discipline matters, and profiles of students (by reference to profile criteria including gender, age, whether undergraduate, postgraduate, local and international).

Universities historically categorise complaints by type, and then formulate processes and allocate resources to support them. It became apparent to us that those processes are often not managed centrally by one unit, which meant that staff could only relate to us their knowledge and experiences of matters within their operational responsibility. In addition, and with a few exceptions, universities do not record centrally about types of complaints or misconduct matters, profiles of students and outcomes of those processes, although individual operational units (such as equity units) might record data.

Moreover, the wide range of processes and systems also would present challenges in trying to compile sufficiently homogenous groups across the sector. In addition, despite the enthusiasm of a number of university staff for the project in general, it would have been difficult to secure commitment to focus groups in a timeline originally proposed. More importantly, student association representatives indicated that individual students were likely to feel inhibited and uncomfortable in relating their experiences within a group structure, and felt that one-on-one interviews would be a more acceptable setting.

Based on this information, we decided to proceed on the basis of a quantitative and qualitative inquiry based on both anonymous on-line surveys and a series of interviews with volunteer participants. Participants would be offered the opportunity to participate in either or both methods of inquiry. These would provide a more appropriate setting for participants to relate their experiences. Moreover, it would also allow members of the project team to capture contextual nuances.

1.6 Significance of project

Student grievances and discipline matters are an aspect of learning and teaching that has, to date, received little attention in Australia. This is despite anecdotal (and some hard) evidence that, in the current costly and competitive higher education environment, students are increasingly resorting to internal and /or external legal processes to resolve disputes about the quality of their courses and the fairness of university processes.

This project was particularly timely in light of the Commonwealth Government's recent announcement, as part of its response to the *Bradley Review* that it proposes to fund higher education places on the basis of student demand and to establish a national regulatory and quality agency for higher education (see Hon J Gillard MP, *Speech to Universities Australia Conference*, 4 March 2009).

2 Chapter 2 – Research methodology and methods

2.1 Introduction

In this Chapter, we describe the research methodology and methods used in this project. We also describe how we selected samples and analysed the data.

2.2 Methodology

2.2.1 Overview

We used two types of methodology in this project, these being standard legal research techniques of analysing and interpreting data from cases, statutes, rules and policies, and social inquiry methods through the use of surveys and interview questionnaires.

2.2.2 Research methods used

We examined various federal and state statutes to ascertain the various legal remedies available to students under them, for example injunctions, declarations and damages (see Appendix 3).

We collected data from two on-line surveys and four sets of interview questions across fourteen sample universities in Australia to obtain the perceptions of university students, student associations and university staff. In addition, we interviewed others external to universities who play a role complaint handling and discipline matters that emanate from the university sector.

We reviewed the public websites (and statutes, policies and procedures available through them) of thirty-nine Australian universities as listed in Appendix 3.

We carried out a review of literature to identify the current state of knowledge (from both legal and teaching and learning perspectives) about approaches to internal and external complaints handling and appeals regimes used in Australia, the United Kingdom and New Zealand.

Underpinning these methods were:

- (a) a standard legal research approach involving the collection, analysis and interpretation of cases and statutes;
- (b) quantitative techniques in relation to the collection and analysis of fact-based data in order to ascertain the extent of particular issues or questions; and
- (c) naturalistic inquiry (Lincoln & Guba, 1985) to obtain meaningful data about the various experiences and perspectives of interview subjects.

2.3 Rationale for approach

2.3.1 Introduction

Confining this project to a review of reported decisions of courts and tribunals has significant limitations. First, these often do not reveal the whole story – such as how the conflict arose, what processes were used to resolve the conflict internally (if at all) and, if so, how well or not those processes worked and why. Moreover, the issues that arise are often complex and diverse. Accordingly, the project team believe it was critical to the success of this project (with its focus on teaching and learning, rather than a strictly legal analysis) to research these issues in more depth. We believe this will better inform the future development of policies and processes within the sector relating to student complaints, discipline and appeals mechanisms.

In addition, reported decisions form only a very small percentage of the overall number of conflicts that arise in universities (Astor, 2008, p. 159). Moreover, the causes of action relied upon in litigation to pursue a claim do not reflect the most common types of complaints raised by students with their universities (see Chapter 3).

2.3.2 Evaluation of universities' websites and complaints and appeals documentation

The rationale for evaluation of universities' websites and their complaints and appeals mechanisms was to determine:

- (a) whether information was easily accessible to students and how well it was presented;
- (b) methods and regimes used to handle and resolve student complaints, misconduct and appeals;
- (c) levels of fairness as perceived by students, which the research team believes is fundamental to the success of an internal complaints or appeals mechanism; and
- (d) compliance with legislation such as ESOS and HESA.

2.3.3 Surveys and interviews

Surveys and interviews allowed the project team to inquire into a number of issues in some considerable depth. These included the types of complaints that arise; how and why they arise and, in some cases, escalate into full-scale disputes; the use by students of support services and advocacy services provided by student associations; the effectiveness of particular complaints and appeals regimes and the levels of support and training provided to staff.

The use of an online survey of students and staff enabled us to collect a large amount of quantitative data in a fairly short time frame (about three months) in a systematic way. Interviews allowed the project team to investigate some of these issues in further depth. While the interview questions were structured thematically, in a similar fashion to the surveys, interview subjects were encouraged to tell of their experiences in their own words. Accordingly, the views expressed in this report are those of the interview subjects: as such, they may or may not be factually correct, and we made no judgments about the veracity of the views expressed.

2.4 Ethics and confidentiality

Ethics approval was sought and obtained from Southern Cross University, The University of Sydney and the University of Technology, Sydney to conduct the online survey and interviews with students and staff and interviews with student associations from selected university sample groups. We also sought ethics approval to interview selected external representatives from organisations and other bodies involved with complaint handling in Australian universities. Copies of the surveys and interview questionnaires were included with the ethics applications, as well as an explanatory statement outlining the nature and method of the research project and consent forms to participate in the survey and/or an interview. The project was designed so that participation in surveys and interviews would be undertaken on a voluntary and confidential basis. The project team was mindful of the fact that many students (and some university staff) would need to feel reassured that their participation in any surveys or interviews would remain confidential. In the explanatory statement, participants were informed, among other things, that all data would be treated confidentially and that they could withdraw from participation at any time without negative consequences to them personally or to their university.

In addition, and to minimise risks related to confidentiality, it was agreed that individual members of the research team would not interview participants from their employer universities.

2.5 Selection of participants

2.5.1 Overview

The project team's original aim was to seek participation in the survey and interviews of students, staff and representatives from student associations from twenty of the thirty-nine Australian universities, chosen according to the following criteria:

- (a) there should be at least one sample university from each state and territory in Australia;
- (b) the samples should be representative of the three existing university groupings: the Group of Eight, the Australian Technology Network of Universities and the Innovative Research Universities of Australia;
- (c) the sample should include, if possible, one private higher education provider; and
- (d) the samples should reflect the diversity of student demographic, student size, regions and background of Australian universities.

2.5.2 Invitations to participate

Following final ethics approval, the project team sent letters of invitation, copies of survey and interview questions, and copies of ethics approvals and explanatory statements to the proposed university sample group to request them to invite their students, staff and student associations to participate in surveys and interviews. Those universities that agreed were asked if they would notify (either by email or via a bulletin board) all staff, students and student associations about the project, and invite them to participate on a voluntary and confidential basis. Web links to the survey and contact details were provided in those notifications, to ensure that participation was voluntary and remained confidential.

Of the twenty universities invited to participate, fourteen accepted and met the sample criteria as follows:

- (a) there was at least one university from each state and territory, except South Australia;
- (b) three Group of Eight universities were represented;
- (c) four Australian Technology Network universities were represented;
- (d) one Innovative Research university was represented; and
- (e) one private higher education provider was represented.

These were (in alphabetical order):

- (a) Bond University;
- (b) Charles Darwin University;
- (c) Charles Sturt University;
- (d) Curtin University of Technology;
- (e) James Cook University;
- (f) Queensland University of Technology;
- (g) RMIT University;
- (a) Southern Cross University;
- (b) The Australian National University;
- (c) The University of Sydney;
- (d) The University of Western Australia;
- (e) University of Tasmania;
- (f) University of Technology, Sydney; and
- (g) University of Wollongong.

2.5.3 Other interviewees

In addition to university staff and students, we also interviewed (at their request) representatives from two other student associations who were not part of the sample university group but who approached us to be interviewed. These were The University of New South Wales Student Guild and the (now defunct) University of Western Sydney Postgraduate Student Association (Bankstown). We also interviewed representatives from the NSW Ombudsman's Office and the WA Department of Education Services, as well as a lawyer engaged in private practice in Sydney.

2.6 Survey instruments

Two separate surveys were designed for completion by students and university staff (both academic and general). The aim of the surveys was to obtain quantitative data about the personal experiences of students and university staff in making or handling complaints in their universities. We used an online web tool to design the survey instruments, and to collect and analyse the data. The surveys were designed to be completed on-line and anonymously in about ten to fifteen minutes. Use of an online, rather than paper, survey instrument, meant data could be collected and analysed more efficiently and systematically.

A combination of single answer and multiple choice answers to the questions was used. Some questions involved a "yes" or "no" response. Others required answers according to stated categories (for instance, respondents were asked to nominate the type of complaint by particular categories). Other questions asked respondents whether they agreed, disagreed or felt neutral about certain statements. Questions were grouped under a number of sections with subject headings. The challenge was to design the survey to be user-friendly for respondents (for example, through use of plain, jargon-free language and prompts), while at the same time providing a framework to obtain comprehensive data about often complex situations.

Respondents were not asked to provide their name or that of their university. However, staff respondents were asked to specify (if they knew) whether their university fell into a particular grouping (e.g., Group of Eight); was located in a capital city or regional area, and if it was a single or multiple-campus university.

In designing the staff survey, we took into account that those respondents could either be academic or general staff and might only be aware of those matters within the purview of that particular staff member's operational framework, rather than having a broad overview of the whole university.

2.7 Interview instruments

Four sets of interview questions were designed for four categories of interviewees: students, university staff (both academic and general staff), representatives from student associations and representatives from what we designated as "external", that is to say, individuals or representatives from organisations involved in dealing with student complaints in various capacities. We used the same online web survey tool to design the interview questions. Data collected from interviews was entered on-line so that it could be analysed efficiently and systematically.

The interview questions were structured for both closed and open-ended responses. Closed responses were used for questions about the role of the person, types of complaints they dealt with, profiles of students, and so on, in order that these responses could be cross-analysed with the survey responses. The same factors as for the surveys were taken into account when designing the staff interview questions.

Interview questions were also grouped into themes similar to those used in the surveys. However, a series of open-ended questions was used in order to encourage respondents (in particular, students) to reveal their experiences and perceptions in their own words.

Staff and student respondents were also asked whether they had also participated in the on-line survey, of which 45% of respondents confirmed that they had. This question was included because respondents could choose to participate by either or both means. Interestingly, the majority of students interviewed gave two reasons for participating in an interview: first, they preferred the opportunity to tell their story in their own words to the limitations of a survey (regardless of whether they had completed the survey); secondly, they wanted to ensure that their experience (if it was a particularly bad one from their perception) did not happen to other students.

2.8 Implementation of survey and interview instruments

Those universities who agreed to participate in the research project notified staff and students either by email or intranet bulletin board of our research project and invited them to participate, either by completing the on-line survey (for which a web link was provided in the notice) or by contacting the project officer by email or telephone for interview (or both). Accordingly, all contact was directly between the participant and the project team in order to maintain confidentiality.

Interviews were conducted either face to face or by telephone directly with members of the project team. Where possible, and to facilitate interviews, participants were provided with copies of the interview questions in advance; at the same time they were provided with copies of the explanatory statement and consent form. During the interview, the interviewer would record answers and make notes by hand on a copy of the questionnaire. The data was later entered on-line and checked against handwritten information. Interviews were not tape-recorded, because transcription is expensive and would have further delayed completion of this project.

2.9 Review of reported court and tribunal decisions

For the purposes of our analysis of legal cases in Chapter 3, we attempted to locate all reported decisions involving disputes between Australian universities and students, by conducting online searches through sources such as the Australian Legal Information Institute and on-line publishers such as LexisNexis. Some cases, such as *Lam v University of Sydney* were not available online and involved manual searches. For this reason, we do not represent that the list of cases (1943-2009) is a complete list.

Our analysis was carried out by recording certain factual data about each case using the online web tool. The data we recorded included the year of the decision, the university involved, cause of action and underlying complaint. This enabled us to perform a certain amount of cross-analysis of some of that data as set out in the tables in Chapter 3.

2.10 Review of AUQA reports

For our review of the AUQA Reports, we accessed these online from AUQA's website (www.auqa.edu.au). Our review in Chapter 4 consists of an overview of what a number of reports say about university regimes for handling complaints, appeals and disciplinary matters at the time the reports were made. The scope of this project does not include any analysis of responses of individual universities to any recommendations made in AUQA reports relating to them.

2.11 Review of universities' websites and documents relating to complaints and appeals

The review of Australian universities' websites, and documents relating to complaints and appeals was conducted by all four members of the research team. We focussed on three issues: first, the accessibility of information about complaints or appeals, second, its accuracy and comprehensiveness and, where applicable, compliance of that information. Each reviewer completed a series of closed questions in an on-line survey format. A combination of single or multiple choice questions was used. Reviewers also gave an overall rating for, and made comments about, the website and documents available on it in the final section.

2.12 Review of overseas practices

We chose two overseas jurisdictions – the United Kingdom and New Zealand – to compare their respective systems for handling student complaints and appeals. We chose these two jurisdictions because, while they share similar legal systems with Australia, they have quite different regimes in place for dealing with student complaints and appeals. In particular, the United Kingdom has established a form of national ombudsman (called the Independent Adjudicator for Higher Education) which has been considered by some Australian commentators as a possible model for Australia (Olliffe & Stuhmcke, 2007).

2.13 Analysis of data

The contents of all survey and interview data was analysed (and, where appropriate, cross-analysed) to identify particular trends and patterns. As noted above, not all of those people we interviewed completed the survey, and vice versa.

We analysed data using one of two methods. Dr Narelle Smith of the School of Mathematical Sciences at the University of Technology, Sydney conducted an analysis and cross-analysis of data from the student and staff surveys and provided a report. An on-line survey web tool was used to analyse responses from interviews, as well as the review of universities' websites and policies and reported decisions and cases.

In this report, we have used tables or charts to display selected quantitative data from surveys, interviews and evaluations. Qualitative data has been taken from extensive notes taken during interviews to record interviewees' responses which provide more descriptive data to inform our interpretations and conclusions.

2.14 Limitations and challenges

A number of unexpected limitations and challenges arose during the project, including:

- (a) Changes to the scope of the project, as explained in Chapter 1.5;
- (b) The process for obtaining human research ethics approval from one participating institution in this research project contributed to significant delays in the selection process of the university sample group and conducting the surveys and interviews. This experience highlights the need for Australian universities to adopt a reasonably uniform, systemised approach to dealing with and approving human research ethics applications, particularly for projects involving low level human impact research. We believe this is critical to the success of research projects;
- (c) As explained in Chapter 2.6, we invited twenty universities to participate as samples of which fourteen accepted. The major reason that six of those universities cited for not participating was that they had already begun to survey their own students, and were (in our view, understandably) reluctant to "over-survey" them. Again, the project team believes that delays in obtaining ethics approval from one participating institution resulted in our having insufficient time to approach other universities as alternative sample group;
- (d) We were unable to obtain a sample from any of the three universities from South Australia (see Chapter 2.5). As mentioned above, one of our aims was to sample at least one university from each state and territory;
- (e) One university said it would only participate if we released to it raw data from the student surveys and interviews, for use as part of that university's annual student feedback survey. We rejected this as inappropriate, because of inconsistency with the project's goals and outcomes and human ethics requirements with respect to confidentiality.

3 Chapter 3 - Legal background

3.1 Introduction

The rationale for this project needs to be understood in the context of historical legal background. There has been considerable concern expressed by a number of government agencies, including state and territory ombudsmen (Olliffe & Stuhmcke, 2007, pp. 204-5), about a perceived increase in volume and complexity of litigation by students against universities in recent years (Astor, 2008, pp.160-1). This issue has also attracted attention from the media from time to time.

Accordingly, we conducted a review of reported decisions of courts and tribunals throughout Australia that involved litigation between students and universities. In this Chapter, we set out some statistical data gleaned from reviewing the reported decisions. It is not within the scope of this report to discuss in detail any legal issues arising from particular cases.

Appendix 1 to this report contains an alphabetical list of cases that we compiled as part of that review. The citations include references to reported decisions of interlocutory and costs applications, as well as appeals. Appendix 2 to this report the same list expanded to list the fact or combination of facts that formed the basis of the litigation (known as a cause of action) and, where we could identify it, the underlying complaint(s) that triggered the litigation.

3.2 Results from review of reported litigation

3.2.1 Overview

We reviewed student litigation from 1943 to December 2008. We cannot be entirely certain that Appendices 1 and 2 are complete lists of all litigation between students and universities, due to the following limitations¹:

- (a) Not all courts and tribunals publish publicly available reports of their decisions, particularly inferior courts such as local and district or county courts;
- (b) The review does not include complaints decided by university visitors or by state and territory ombudsmen, because reports of findings in individual cases are usually not publicly available; and
- (c) The review does not include cases where litigation was commenced but ultimately settled through negotiation, conciliation or some other form of ADR between the parties, as often occurs. Litigation resolved this way is generally not reported. In many cases, terms of resolution remain confidential between the parties.

Notwithstanding our comments in subparagraph (b), the review jurisdiction of visitors to review university decisions has largely disappeared from the Australian university sector over the last 15 years², although it was rarely invoked before the late 1970s (Price & Whalley, 1996, p. 53).

3.2.2 Volume of reported decisions

The earliest reported Australian court or tribunal decision we were able to locate dates from 1943. *R v University of Sydney; ex parte Drummond* (1943) 67 CLR 95; [1943] HCA 11 (11 June 1943) involved a High Court challenge against a university's refusal to admit a person due to quotas for admission then in force and imposed under national security legislation (see Table 1). Up to the mid 1990s, litigation between students and universities was relatively rare. However, since then there has been a marked increase, in terms of raw numbers, in litigation between students against universities.

¹ Other commentators have experienced similar problems (Astor, 2008, p159)

² The visitor's powers of review in New South Wales universities were abolished in New South Wales universities with the enactment of the *University Legislation (Amendment) Act 1994* (NSW).

Table 1 reflects reported decisions of courts and tribunals from 1943 to the end of 2008 for those decisions for which we were able to access copies. Table 1 reports cases involving appeals only once. Thus, if a decision of a court or a tribunal at first instance subsequently was the subject of one or more appeals, then we have only reported it once, although we have indicated in Table 2 the number of decided appeals.

Table 1: Ch 3 - Reported decisions 1943-2008

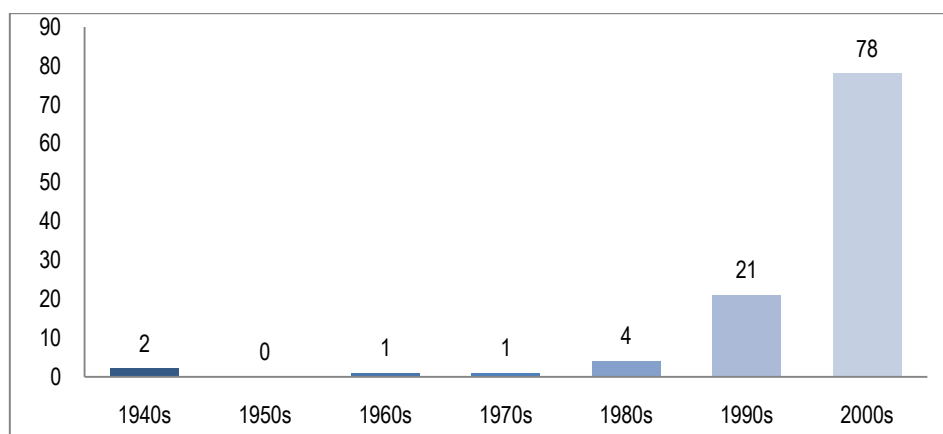


Table 2 shows the number of cases finally decided by courts or tribunals during the years 2004 to 2008 inclusive. As with Table 1, the numbers reflect the final decision, whether at first instance or on appeal.

Table 2: Ch 3 - No of reported decisions (including appeals) – 1995-2008

Year of decision	Total decisions for year	No of first instance decisions	No of appeal decisions
1995	1	1	0
1996	4	4	0
1997	5	4	1
1998	2	2	0
1999	4	4	0
2000	1	0	1
2001	9	6	3
2002	10	6	4
2003	7	2	5
2004	13	6	7
2005	11	5	6
2006	8	7	1
2007	5	3	2
2008	14	10	4

3.2.3 Causes of action and underlying complaints

From our analysis of these cases, the five most common types of complaints involving litigation between students and universities were race and disability discrimination (24.1% each), assessment (18.5%), non-admission to courses (14.8%) and appeals against misconduct (14.8%). However, many cases consisting of multiple complaints are often framed around one or more causes of action. For example, a complaint framed as race discrimination may in fact arise from a set of facts that involves other categories of complaints – for example a complaint about assessment of the student's work (Varnham & Kamvounias, 2009).³ From our

³ This occurred in *Tu v University of Sydney* [2002] NSWADTAP 19 (31 May 2002); *Tu v University of Sydney (No 2)* [2002] NSWADTAP 25 (13 August 2002) which involved race discrimination as a cause of action. However the complaints that triggered that complaint related to the University's assessment of the student's work and alleged breaches of privacy.

analysis, cases framed as race discrimination cases most commonly involved these types of complaints in the following order:

- (a) Assessment;
- (b) Non-admission to course;
- (c) Exclusion from course;
- (d) Dissatisfaction with course experience.

Appendix 2 lists, for each case reviewed, the cause of action and the underlying complaint(s).

3.2.4 Profiles of litigants

We also (from the reported facts of each case) attempted to identify the profile of students who commenced action by reference to gender, undergraduate or postgraduate status and whether they were local or international students. Unfortunately, not all decisions report details – although we were able to discern from most the gender of the student and whether they were undergraduate or postgraduate students.

The only definitive statistical profile discerned from the review is that males constituted 67.6% of student litigants in the cases identified.

3.2.5 Results of litigation

An overwhelming majority of the cases reviewed (eighty four in total or 80%) were decided in favour of the university (whether at first instance or on appeal). In about 64% of decisions in favour of the university, there was no order as to costs against the student, although that figure is probably explained by the fact that a majority of actions were commenced in “no-costs” jurisdictions, such as the NSW Administrative Decisions Tribunal. Cases commenced in a court (including appeals) usually result in a costs order against the unsuccessful student. It is, of course, another matter whether universities have enforced those costs orders.

The reason why most students seemed to be unsuccessful is because the allegations made were not supported by the facts to the necessary extent, or because the court or tribunal lacked jurisdiction. This is particularly so with actions alleging unlawful discrimination. What also stands out is that students sometimes commenced action in more than one court or tribunal about essentially the same complaint.

For 43.5% of decisions reviewed, more than three years passed from the time the complaint was first brought (according to the facts as recited) to the date of the decision. Around 65% of reported decisions are decisions at first instance (meaning, they were not subsequently the subject of an appeal).

3.2.6 Has student litigation increased?

This background begs the question: is it possible to say definitively that student-university litigation has increased? Although Table 1 suggests a marked trend to increased litigation since 2000 (with variances from year to year), we think an analysis based on raw numbers alone presents a somewhat distorted picture for the following reasons.

First, whether one can report an increase in litigation depends on how certain factors are measured: such as the ratio of overall student numbers to reported decisions (and annual increases in both of them), the time period measured, and whether each appeal is treated as a separate action or, as we have done with our analysis, part of one omnibus action. To illustrate our point, Table 3 measures increases in overall student numbers from 1995 to 2008 against increases in reported decisions of courts and tribunals. However, for the reasons given above, an analysis based on raw numbers of reported decisions is misleading. Moreover, the figures shown in Table 3 for the year of decisions reflect when a court or tribunal handed them down : not when the student commenced action.

Table 3: Ch 3 - Percentage of increases or decreases in reported decisions to percentage of increases in enrolled students – 1995-2008

Year of decision	Total decisions for year	% increase in litigation from previous year	Total Australian university students*	% increase in student numbers from previous year
1995	1	N/A	604,176	N/A
1996	4	300%	634,094	5%
1997	5	25%	658,849	3.9%
1998	2	-60%	671,853	2.0%
1999	4	100%	686,267	2.1%
2000	1	-75%	695,484	1.3%
2001	9	800%	842,143 ⁺	21%+
2002	10	11%	896,621	6.5%
2003	7	-30%	929,952	3.7%
2004	10	30%	944,977	1.6%
2005	11	10%	957,177	1.3%
2006	8	-27%	984,061	2.8%
2007	5	-37.5%	1,029,846	4.7%
2008	14	180%	1,066,095	3.5%

Second, cases litigated before courts and tribunals represent only a very small fraction of complaints overall (Olliffe & Stuhmcke, 2007, pp. 204-5). Moreover, reports about increases in litigation tend to emanate from the media, which, in turn, probably colours public perceptions (Astor, 2008, pp. 156-9). This was evident from interviews with university staff (see Chapter 8.3.8).

* Source: Department of Education, Employment & Workplace Relations, Selected Student Statistics, 1995-2008 available at http://www.dest.gov.au/sectors/higher_education/publications_resources. The figures represent total students enrolled with all Australian higher education providers for the years cited by level of course and includes enabling and non-award courses..

+ There are some discrepancies in the reports published for these figures. The total number of students enrolled for 2001 reflected in the summary for 2000-2001 is 726,418, which would represent an increase 4.4% on the previous year. However, the total figure reflected in the summary for 2001-2002 is 842,183, which would represent an increase of 21% on the previous year. We have shown the latter figure in the table because it is from a later publication.

4 Chapter 4 – Review of AUQA reports

4.1 Introduction

AUQA was established in March 2000 by the Ministerial Council on Education, Training and Youth Affairs (MCEETYA) as an independent national quality assurance agency for the higher education sector in Australia (source: www.auqa.edu.au). AUQA's main tasks are:

- (a) to arrange and manage a system of periodic audits of the quality of the academic activities and the quality assurance arrangements intended to maintain and elevate that quality;
- (b) to monitor, review, analyse and provide public reports on the quality of outcomes in Australian universities and higher education institutions and on their impact on the quality of higher education programs; and
- (c) to report periodically on the relative standards and outcomes of the Australian higher education system and its institutions, its processes and its international standing using information obtained during the audit process and from other sources.

(Blackmur, 2008)

AUQA does not deal with individual complaints or appeals from decisions of universities. Rather, it is concerned with ensuring that universities have quality processes in place and that these achieve the institution's stated mission and objectives (source: www.auqa.edu.au/aboutauqa/complaints/).

4.2 Results of review

For the purposes of this project, we reviewed AUQA's audit reports for all Australia's universities from March 2003 to July 2008. These reports are publicly available on the AUQA website (see www.auqa.edu.au).

In five cases, AUQA made commendations specific to student grievances and appeals processes:

- (a) RMIT University (AUQA, 2003e, p. 39) and LaTrobe University (AUQA, 2005a, p. 53) in each case, for their Ombudsmen's offices;
- (b) Griffith University for "BuzzBack", a web-based interface for students to lodge complaints, compliments or concerns and receive responses or feedback (AUQA, 2004a, p. 22);
- (c) University of Western Sydney for the development and effectiveness of its computer-supported Complaints Handling System (AUQA, 2007, p. 25); and
- (d) The University of Newcastle for its processes for teaching both onshore and offshore, including those relating to complaints procedures (AUQA, 2008, p. 101).

AUQA also made eight recommendations in relation to student grievances and appeal processes:

- (a) that the University of Canberra use its surveys, learning plans and "Gold Book" to signal clear, consistent and confidential complaint reporting pathways for its research students, in particular addressing issues of confidentiality, future prejudice, quality of supervision and standards of facilities and support (AUQA, 2003b, p. 30);
- (b) that the University of Canberra restore the Dean of Students to a full-time position, to ensure that student issues can be dealt with proactively (AUQA, 2003b, p. 38);
- (c) that Flinders University take urgent action to strengthen processes to ensure that staff and students are made aware of student appeals, grievance and complaint processes and that processes are implemented consistently to ensure that issues are resolved promptly (AUQA, 2006b, pp. 52-3);
- (d) that the University of New England review its systems to ensure that students in transnational programs are aware of that university's grievance procedures, and that those procedures are able to be effected (AUQA, 2004c, p. 48);

- (e) that Queensland University of Technology formalise its recording of complaints from postgraduate research students to be able to efficiently monitor the number of complaints and to better ensure the quality of the handling of complaints (AUQA, 2005b, pp. 28-9);
- (f) that The University of Western Australia continue to review the extent to which its assessment policies are being implemented consistently and comprehensively throughout the University, and review its postgraduate grievance and appeals policies and processes, with a view to consolidating them in the interest of students (AUQA, 2004b, p. 28);
- (g) that The University of Newcastle undertake a comprehensive review of its systems for assisting students with problems and grievances, incorporating consideration of the role of the Dean of Students and similar positions throughout the University, with a view to providing an approach that is well co-ordinated, effective and allows issues to be tackled both strategically and on a casework basis (AUQA, 2003a, pp. 40-41);
- (h) that Southern Cross University ensure that the reporting paths and role accountabilities of the Student Ombud function are not only independent, but are seen to be independent (AUQA, 2003d, p. 40).

The AUQA audit reports for ten of these universities made no mention of student grievances and appeals processes.

AUQA's reports of the remaining universities made some mention of various aspects of student complaints and appeals such as the role and awareness among students of student ombudsmen (AUQA, 2004b, p. 47) and (AUQA, 2006a, p. 38), systems for addressing complaints (AUQA, 2003c, p. 51).

In summary, AUQA has been positive about student ombudsmen, online complaints handling systems and common and consistent processes for both onshore and offshore programs. However, in some cases, it has expressed concern about the tenure and independence of the student ombudsman's office, the recording of complaints, increasing staff and student awareness of relevant policies and procedures and ensuring those policies and procedures are clear, coordinated and effective.

5 Chapter 5 – Review of student grievances and discipline processes and documents in Australian universities

5.1 Object and scope of review

5.1.1 Introduction

One indicator of the success of any complaint handling regime is the quality of information made available. This includes information about what can be expected from a complaints process, as well as instructions about how to make a complaint. Australian universities have for several years used online technologies for administrative purposes, including online information services for students, recognising that students need to have access at all times to information about their study (Bell, Bush, Nicholson, O'Brien, & Tran, 2002, p. 4).

The project team reviewed the websites of all Australian universities, and documents published on them, to identify the information provided to students about complaint handling and discipline procedures. We conducted this review as far as possible from the perspective of students (and to some extent – staff members) by attempting to access information through that part of a university's website often designated as the "current students" page. We also reviewed web pages designated for international students.

5.1.2 Issues reviewed

The issues reviewed were:

- (a) whether universities had centralised complaints management regimes managed by a student ombudsman, dean of students, grievance officer or similar;
- (b) how well information about those regimes was presented and explained on the universities' websites, and accessibility;
- (c) the types of complaints dealt with under those processes;
- (d) whether there was provision for informal resolution or some form of alternative dispute resolution;
- (e) whether processes for dealing with student discipline and academic appeals contained specific requirements for several matters falling under the heading of "*natural justice*" or "*procedural fairness*", including:
 - representation allowed for students;
 - right to an oral hearing;
 - whether the powers and responsibilities (for instance, to act impartially) are specified;
 - the right to reasons for a decision, as well as being notified of the decision itself; and
 - any internal rights of appeal or review, and the grounds for them;
- (f) whether websites have a dedicated section that provides full information about complaints and appeals to international students;
- (g) whether there are any processes for complaints or appeals specifically for international students and, if so, in which areas; and
- (h) levels of compliance with Standard 8 of the ESOS Code, which prescribes certain requirements for complaints and appeals processes as these relate to international students.

The results of our review shown in this Chapter reflect the time at which the review of a particular university's rules and processes was conducted (that is to say, between November 2007 and November 2008). Accordingly, those results do not take into account any changes to rules and processes that a university may have implemented since the time of our evaluation, unless this was specifically drawn to the attention of the project team or became apparent following interviews with that university's staff.

5.2 Results from review

5.2.1 A centralised complaints regime

Across the sector, the following table represents the number of universities we identified (from a review of websites) as having a centralised complaints management regime, with a dedicated person playing a role in handling or resolving grievances in one way or another. The nomenclature and role for this centralised role varies considerably and, as Table 4 indicates, the holder of an office may perform more than one function. For example, according to the websites of two of the eleven student ombudsmen, those offices will, in appropriate cases, mediate disputes, as well as perform the usual functions of advising students and conducting investigations. The websites of five of those eleven student ombudsmen also state that they will play a facilitative role, that is, in trying to have complaints resolved informally, instead of conducting a formal investigation.

Table 4: Ch 5.2 - Types of Centralised Complaints Regimes

Type of Role	Investigative role	Support & Assist Role	Facilitator Role	Mediation role
Student Ombudsman	11	1	5	2
Dean of Students	1	4	4	1
Complaint Manager	1	0	2	0
Grievance Officer	1	1	1	0
Other (person or committee)	9	5	4	2

5.2.2 Types of complaints handled

We also reviewed whether universities had in place complaints handling mechanisms that dealt with the categories of complaints listed in Table 5. Most universities had one broad policy that dealt with most types of grievances, except discrimination or harassment, academic appeals and student discipline appeals, which were more often dealt with under separate policies:

Table 5: Ch 5.2 - Processes for handling complaints by category

Type of complaint	Has process	No process	Unclear	Total
Academic grades or marks	39	0	0	39
Award of honours	27	0	12	39
Theses	32	0	7	39
Disciplinary proceedings	37	0	2	39
Discrimination	37	0	2	39
Bullying or harassment	37	0	2	39
Research disputes (for postgraduate or doctoral students)	33	0	6	39
General	38	0	1	39

5.2.3 Dealing with complaints informally or through dispute resolution mechanism

Of those universities that had one or more processes for the types of grievances listed, we reviewed whether they also included provision for informal resolution of complaints, either by directly approaching the person involved or through mediation or other process incorporating alternative dispute resolution. In nearly all cases, universities told students to first contact the lecturer or university staff member who made the decision that affected them. In some cases (but by far the minority), the university offered some form of mediation, although in many of those cases, no information was given as to how mediation might be initiated, who might conduct it (apart from a reference in some cases, to it being “external mediation”), how it would be conducted and what students could expect from that process. One might conclude from this that, in some cases, mediation is conducted on a somewhat *ad hoc* basis, which raises issues about consistency in how complaints are dealt with and resolved.

Table 6: Ch 5.2 - Informal & ADR by Complaint Category Checklist

Type of complaint	Informal or ADR	No informal or ADR	Unclear	Total
Academic grades or marks	28	11	0	39
Award of honours	19	9	11	39
Theses	19	11	9	39
Disciplinary proceedings	16	20	3	39
Discrimination	30	6	3	39
Bullying or harassment	32	4	3	39
Research disputes (for postgraduate or doctoral students)	22	10	7	39
General complaints	28	8	3	39

5.2.4 Dealing with academic misconduct

All Australian universities have rules that deal with what is usually termed “academic misconduct” and “non-academic misconduct”. “Academic misconduct” is usually understood to mean misconduct relating to academic standards of behaviour, for instance, plagiarism or cheating in examinations. “Non-academic misconduct” is usually understood to mean misconduct relating to behaviour not directly associated with academic standards of behaviour, for instance, harassment, bullying or theft. In some cases, “non-academic misconduct” can also amount to criminal behaviour.

For misconduct rules, we devised a form of checklist to rate what we thought should be included in rules as minimum requirements for natural justice.

All Australian public universities are established by Commonwealth, state or territory acts of parliament, and exercise statutory powers for many purposes, including for the purpose of regulating academic behaviour and standards. Accordingly, university decision-makers are bound by rules of natural justice when making decisions that affect the rights of students.

At the time of review, twenty-five universities had two, separate processes for academic and non-academic misconduct. Fourteen had one process, although in some cases academic and non-academic misconduct were investigated or decided by differently appointed or constituted officers or bodies.

We allowed for three possible responses – “yes”, “no” or “unclear”. We included “*unclear*” as a possible answer, because we assumed that exercise of a particular right, power or responsibility might in fact occur in practice, but not necessarily be stated in the rule. We only answered “no” where it was indicated in clear terms that a particular power or right did not exist, for example, the right for a student to be represented by an advocate at a hearing.

The results are as set out in Table 7. Of note is the large number of universities that expressly prohibit students from being legally represented at hearings for academic misconduct. Moreover, many rules do not include provisions dealing with issues of conflicts of interest, basing findings on facts before them or giving reasons for decisions.

Table 7: Ch 5.2 - Natural Justice Checklist – Academic Misconduct

Requirements of procedure	Yes	No	Unclear	Total
Students must given an opportunity to respond to the allegation	37	0	2	39
Students have a right to be heard orally	35	0	4	39
Students can be accompanied at hearing by a friend	36	0	3	39
Students can be represented at hearing by a lawyer or other advocate	14	15 ⁴	10	39
Decision-makers must act impartially	17	0	22	39
Decision-makers must declare any conflicts of interest	15	0	24	39
Decision-makers can make broad inquiries (ie, not bound by rules of evidence)	25	0	14	39
Decision-makers must base findings of fact only on evidence before him or her	9	0	30	39
Students must be notified of decision	34	0	5	39
Students must be given reasons for decision	14	0	25	39
Penalties are stated	35	4	0	39
Students are entitled to internal review of decision	37	0	2	39
Students can appeal finding of misconduct	37	1	1	39
Students can appeal penalty	37	0	2	39
Appeals can only be made on specified grounds	21	8	10	39
Students must be notified of outcome of appeal	33	0	6	39
Students must be given reasons for decision on appeal	11	7	21	39

5.2.5 Academic appeals

When reviewing academic appeals rules, we devised another checklist as to what we thought should be included in rules, again in terms of what we considered to be the basic requirements of natural justice.

As with the academic misconduct processes, and for the same reasons, we included three possible responses: “yes”, “no” or “unclear”. What stands out is the lack of any definition for “academic merit” in rules that expressly limit appeals to matters of procedure only. The academic merit of a work depends on its alignment with particular assessment criteria. However, those criteria are not always explained to students and, in some cases, may be withheld deliberately. This is notwithstanding that students have succeeded in gaining access to documents relating to assessment, see for example *James v Australian National University*

⁴ In a minority of these cases, there was provision in the rule for students to be represented by an advocate (such as a student association welfare officer), but that legal practitioners were expressly prohibited [see Chapter 5].

(1984) 6 ALD 687; (1984) 2 AAR 327; [1984] AATA 501 (examiners' reports) and *McKean v University of Melbourne* [2007] VCAT 1310; [2008] VSC 325 (marking guides).

As with academic misconduct rules, a large number of academic appeals rules do not include specific requirements for decision-makers to act impartially, for dealing with conflicts of interests or giving reasons for decisions although, again, these might actually occur in practice.

Table 8: Ch 5.2 - Natural Justice Checklist – Academic Appeals

Requirements of procedure	Yes	No	Unclear	Total
Student can seek review of grade or assessment	38	0	1	39
Rules specify deadline for lodging appeals	31	3	5	39
Meaning of “academic merit” (or similar terminology) is explained	7	29	3	39
Grounds on which appeal can be made are stated	23	12	4	39
If rules state no right of appeal against academic judgment, they say what falls within or outside scope of academic judgment	5	19	15	39
Decision makers must act impartially	10	4	25	39
Decision-makers must declare any conflicts of interest	8	3	28	39
Students must be notified of decision	33	0	6	39
Students must be given reasons for decision	13	1	25	39
Outcomes of appeal against decision are stated	28	1	10	39
Students must be notified of appeal decision	31	1	7	39
Students must be given reasons for appeal decision	12	3	24	39

5.2.6 International students

We also tried to ascertain whether universities adopted separate processes for international students and local students for handling grievances. Only two universities indicate a separate process for international students, dealing with general grievances or complaints.

We also examined whether university rules complied generally with the provisions of Standard 8 of the ESOS Code, which prescribes minimum standards for complaints processes (see Table 9). The results from Table 9 indicate that many universities have processes that apply equally to international and local students. Again, we did not assume that a mere absence of an explicit statement of compliance with the ESOS Code meant non-compliance – we designated “unclear” in those cases, as compliance may well happen in practice.

Table 9: Ch 5.2 - International Students – ESOS Standard 8 Checklist

Requirements of procedure	Yes	No	Unclear	Total
Process is in place to resolve complaint formally, if it cannot be resolved informally	37	1	1	39
University must keep written record of complaint	21	1	17	39
Student has right to formally present case at minimum cost to himself or herself	32	1	6	39
Student can be accompanied and assisted by support person at any meetings ⁵	36	1	2	39
Process must begin within 10 working days after lodgement of complaint	26	3	10	39
All reasonable measures must be taken to finalise complaint as soon as possible	21	2	16	39
Students must be given statement of outcome and reasons for decision	26	4	9	39

We also reviewed whether universities' websites (or handbooks available through those websites) gave information, aimed specifically at international students (as opposed to students more generally), about their complaints procedures generally. Of these, nineteen did so and twenty did not, although most universities do include a link on the international students page to the ESOS Code. Table 10 summarises the data collected for those nineteen universities.

What is particularly notable is the lack of information given to international students about what happens to their status if and when they appeal. While copies of the Code are linked to the website, and while compliance may happen in practice, we were nonetheless surprised that this information is not given greater prominence on universities' websites.

Table 10: Ch 5.2 - Information for International Students on Universities' Websites

What students are told	Yes	No	Total
Where they can access appeals or complaints processes	19	0	19
Who students can contact about their appeal or complaint	16	3	19
Where they can obtain support or assistance	19	0	19
If not satisfied with outcome of decision or way in which matter handled, they have right of external review	15	4	19
Who they can contact about an external review	13	6	19
That the university will maintain the student's enrolment status throughout the internal complaints or appeals process in relation to misbehaviour or cancellation of enrolment	2	17	19

5.2.7 Overall rating

Finally, we rated overall each university's processes according to the following set out in Table 11. While to some extent this was a subjective exercise, the reviewers were guided by best practice guidelines dealing with complaints and appeals in higher education (NSW Ombudsman, 2006); (Ombudsman Victoria, 2007); (The Quality Assurance Agency for Higher Education, 2007). Moreover, we took into account those students who face challenges in accessing information for various reasons, including English language ability, computer literacy skills, and lack of familiarity with university terminology.

⁵ The term, "meeting" is not defined in the ESOS Code, but we interpreted it to include both meetings with staff, as well as hearings, such as for misconduct or academic appeals. We also interpreted "support person" to include an advocate, but see commentary in Chapter 5 relating to legal representation of students.

Table 11: Ch 5.2 - Overall Ratings of University Processes

Matter rated	Very Good	Good	Satisfactory	Poor	Very Poor	Total
Accessibility to students	7	11	12	6	3	39
Comprehensiveness of information	6	10	17	4	2	39
Use of concise language and formats (e.g. FAQs)	5	8	16	7	3	39
Helpful links to other web pages or web sites	5	14	12	5	3	39
Consistency between policies and procedures underpinning them	1	14	21	3	0	39
Easy to navigate different policies and procedures	0	10	14	12	3	39
Overall fairness towards students in terms of compliance with procedural fairness	3	10	21	5	0	39

5.3 Recurrent themes from review

The following themes emerged from our review:

- (a) nearly all universities have pages on their websites directed specifically at *current students* and *international students*, with a plethora of information relevant to the student experience at university;
- (b) many universities make good use of FAQs in presenting information to students;
- (c) most (but not all) universities provide contact details (including telephone numbers and email addresses) of relevant officers to contact about a complaint or grievance;
- (d) only a minority of universities provide useful flow charts to describe a process (some for both students and staff);
- (e) a minority of universities also produce guidelines and standard forms and letters for staff about complaints and appeals processes.

6 Chapter 6 – Student perceptions

6.1 Introduction

In this chapter, we set out the results from the on-line student survey and interviews with university students.

6.2 Results from student survey

6.2.1 Introduction

The student survey was organised into the following themes:

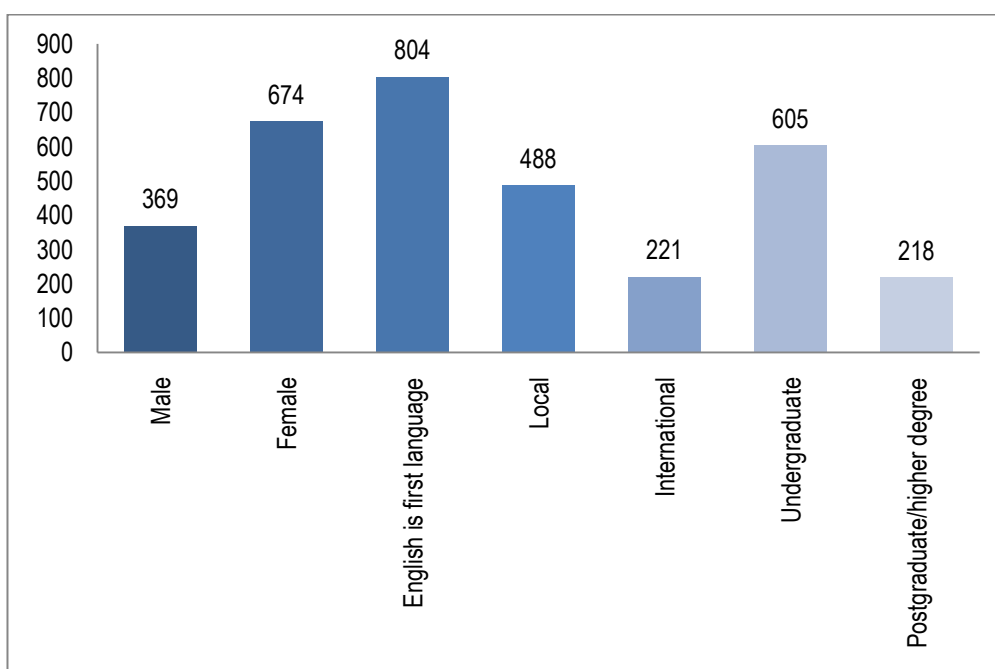
- (a) the demography of students who make complaints or who are the subject of disciplinary proceedings (or both);
- (b) the type of complaint;
- (c) the student's experience of internal processes (and, if they utilised them, any external processes);
- (d) resolution of the complaint or appeal; and
- (e) impact on the student's studies.

6.2.2 Respondent profile

A total of 1577 respondents commenced the survey, of which 826 respondents completed all questions. The numbers of missing responses also differed for each question, following a pattern of a decrease in questions as respondents progressed through the survey. This is probably attributable to the number of questions, as well as a structure that tried to accommodate both complaints and misconduct allegations, despite efforts to minimise complexity through use of skip logic and prompts.

The responses to questions about students' demographic profile were as follows:

Table 12: Ch 6.1 Student Survey – Respondent Profile



6.2.3 Complaints

We asked students to indicate with “yes” or “no” responses whether they had assistance or support with their problem or complaint from particular categories of support services or people.

The most popular response was “relative/friend”, followed by “staff member in your faculty”. Perhaps of some concern is that only a small percentage sought help from the university’s counselling service (19.7%) or the student association (18.9%). In the case of student associations, this may reflect the fact that many student associations interviewed reported that their ability to provide welfare and advocacy services to students had been severely curtailed following the introduction of VSU from July 2006 (see *Higher Education Support Amendment (Abolition of Compulsory Up-front Student Union Fees) Act 2006 (Cth)*).

Respondents were asked how their complaint had arisen. Of the 998 respondents who answered this question, 779 (78.1%) said they had a complaint or needed assistance with a problem, 107 (10.7%) said the university had raised a problem with them about their studies or behaviour, and 112 (11.2%) said both.

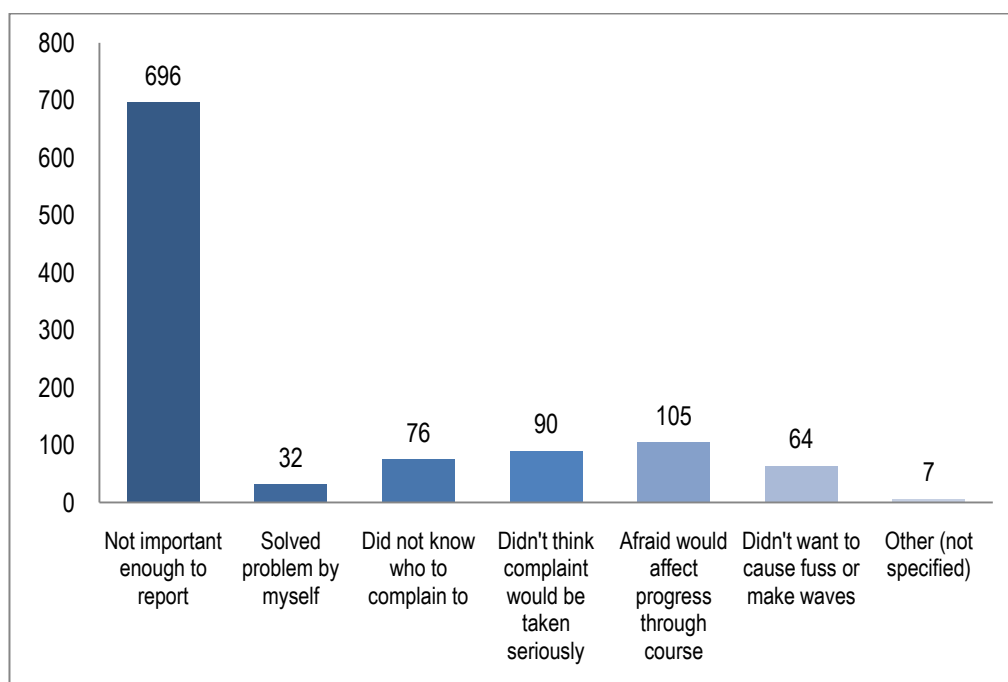
We tested for significant demographic differences between the three groups of students identified above. There were significant differences in gender, English as a first language and international student status as follows:

- (a) of students who had a complaint or needed assistance with a problem, 66.6% were female (517 out of a total of 776 responses);
- (b) of students with whom the university raised a problem, 53.3% were female (57 out of a total of 107 responses);
- (c) students whose first language is English accounted for 80.9% (627 out of 755) of those who raised a complaint or problem, and 64.2% (68 out of 106) with whom the university raised a problem.

The results were almost identical for international and local students

We then asked questions of students who had raised a complaint or problem with the university about how they reported the complaint or problem and whether it had progressed. Out of a total of 808 responses, 668 (or 82.7%) said they had spoken to someone in the university first. For those students who answered no to this question, we asked why they did not. Their responses were as follows (and they could specify more than one reason):

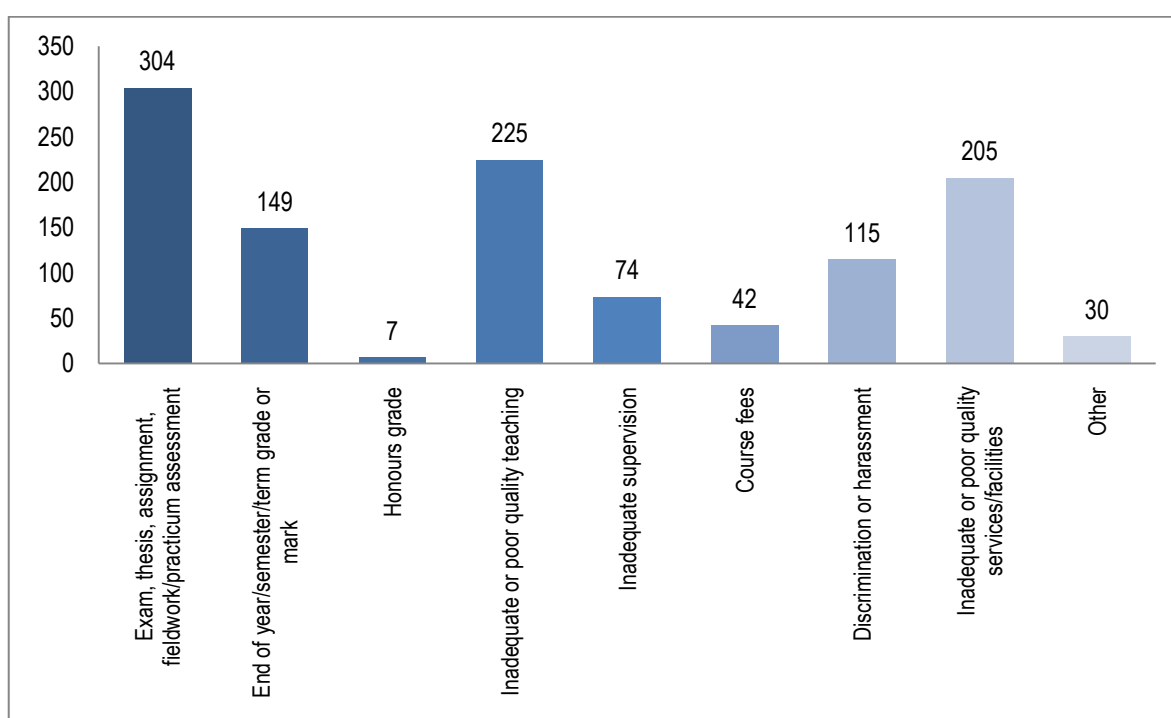
Table 13: Ch 6.1 – Student Survey - Reasons For Not Pursuing Complaints



We then asked respondents to identify their type of complaint(s) (and they could specify more than one) according to particular categories. Where their complaint did not fit in with one of the prescribed categories, we gave them the option of “other” and asked them to specify the type of complaint. A number of complaints were categorized as “other” but their given descriptions indicated that they in fact fell within one of the specified categories. Accordingly, those types of complaints were re-categorised according to their description.

The most common type of complaint was about assessment, followed by inadequate or poor quality teaching, followed by inadequate or poor quality services or facilities.

Table 14: Ch 6.1 – Student Survey - Types of Complaints



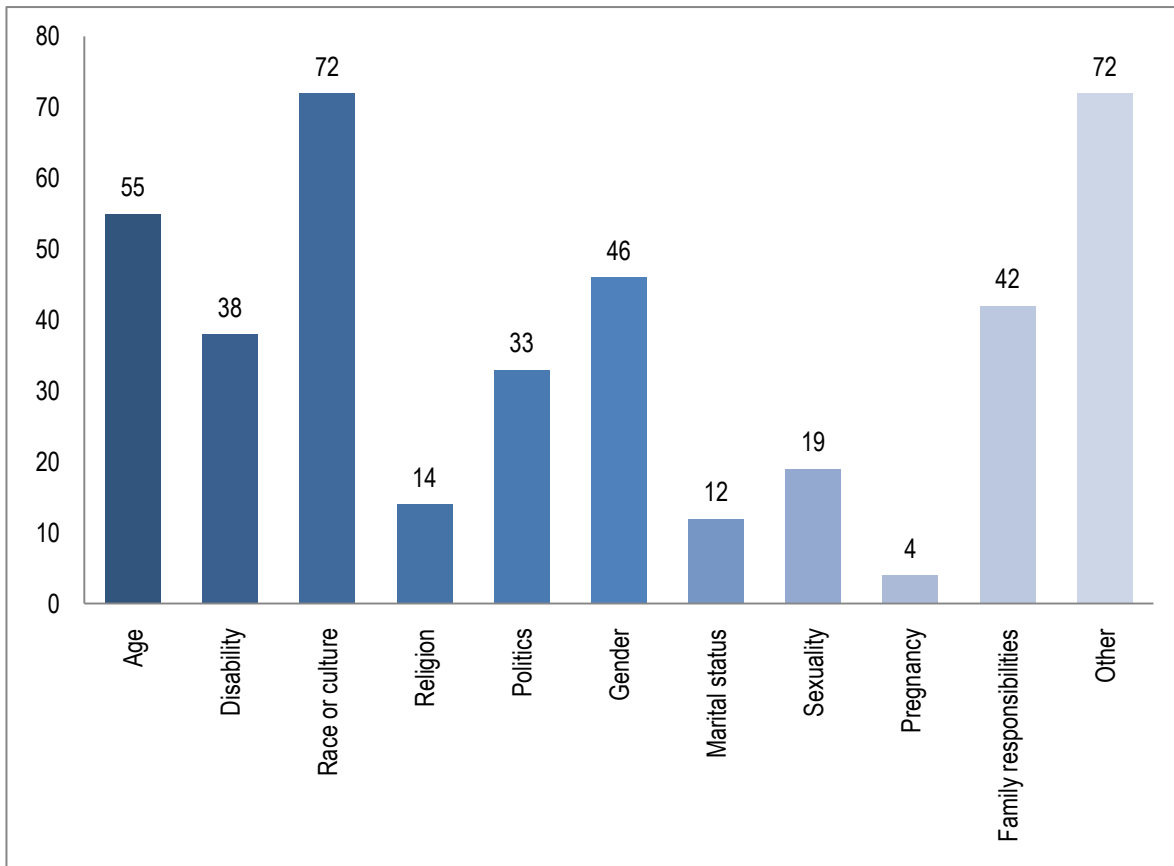
We asked respondents to nominate the type of discrimination if they felt their problem or complaint involved discrimination. There is a discrepancy with the responses, because while 251 respondents answered this question (again, they could nominate more than one head of discrimination), only 115 had answered the previous question about the type of complaint. However, this can probably be attributed to the fact that discrimination is not always a stand-alone complaint; it often triggers, or can be triggered by, other complaints, such as dissatisfaction with assessment (see also Chapter 3).

We assume from this that some respondents originally designated their complaint in a different category (for instance, assessment), but felt that there was an underlying issue of discrimination.

We also included two additional heads of discrimination – religion and politics, which are included in the enabling acts of a number of Australian universities (including all NSW universities). These provisions operate to prohibit religious tests or political discrimination as criteria for admission to a university, eligibility to hold office, ability to graduate or otherwise enjoy the benefits, advantages or privileges of the university.⁶

⁶ see for instance, s25 of the *Southern Cross University Act 1993* (NSW), s24 of the *University of Technology, Sydney Act 1989* (NSW) and s31 of the *University of Sydney Act 1989*. For other states and territories, see for example s 42 of the *University of Melbourne Act 1958* (religious test), s37 of the *Monash University Act 1958* (Vic) (religious test), s 39 of the *University of Western Australia Act 1911* (WA) (religious test), s28 of the *Curtin University of Technology Act 1966* (WA) (religious test), s40 of the *Australian National University Act 1991* (Cth) (religious test).

Table 15: Ch 6.1 – Student Survey - Types of Discrimination Reported

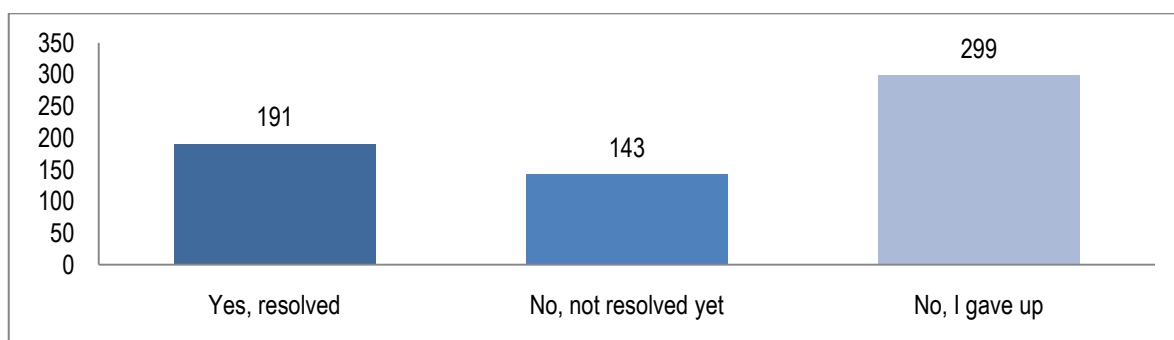


Race or culture and “other” were the two most common types of discrimination reported, followed by age and gender. Responses designated as “other” were varied and reflect that many people interpret the term “discrimination” more broadly than as defined in anti-discrimination laws. The most common “other” response was personality clashes, but attitudes of teaching staff towards students or differences about learning or writing styles were also reported.

Respondents were asked whether they had been offered mediation to resolve their complaint and, if so, whether they had used it and whether it had resolved their problem or complaint. 17.7% said they had been offered mediation and, of those, 15.6% said they had used it, and 6.2% of that number said their problem or complaint was resolved after mediation.

The results of the survey also indicate that a very large proportion of respondents felt that their complaint was not resolved (at least to their satisfaction) and gave up (as shown in Table 16):

Table 16: Ch 6.1 – Student Survey - Whether Complaint Now Resolved



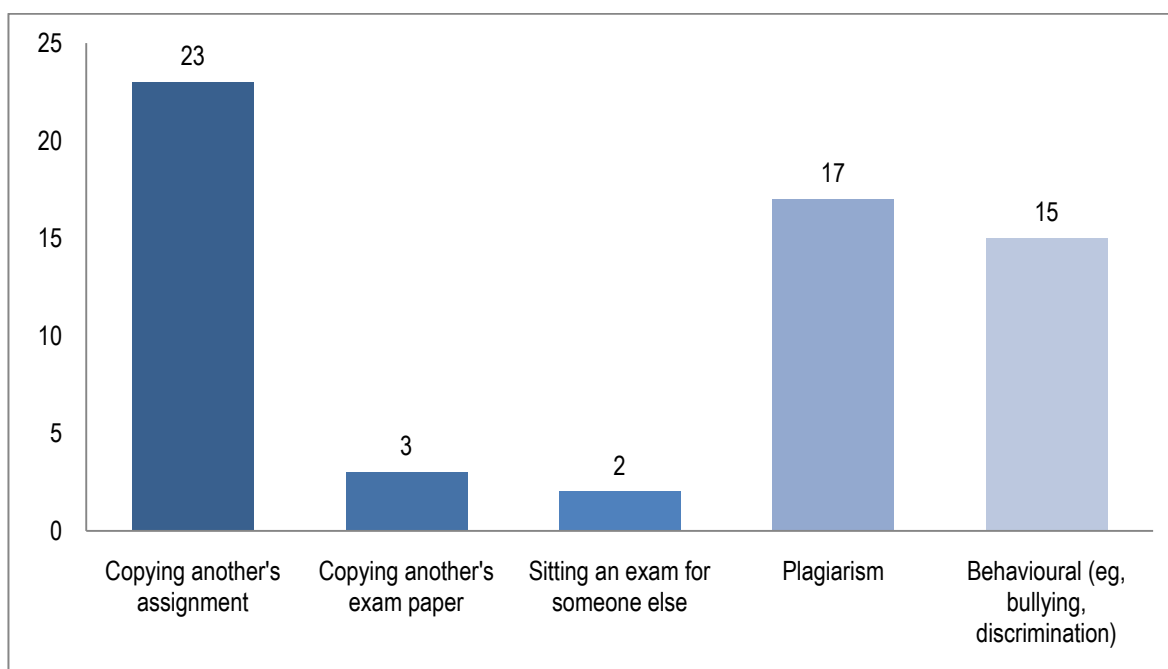
Responses also indicated that around 40% of complaints were resolved in less than one month, and around 32% were resolved in one to three months.

Of those respondents who indicated that their problem had now been resolved, 53.2% said that this was by speaking to one or more people informally, and 35.5% said it was resolved after making a formal complaint or appeal process in the university.

6.2.4 Misconduct allegations and appeals

A separate section of the survey focussed on responses relating to allegations of misconduct. We categorised types of misconduct and asked students to nominate one or more categories. As with the complaints section, some responses designated as “other” had to be re-categorised where it was clear from their description that they fell within a prescribed category. The results are shown in Table 17:

Table 17: Ch 6.1 – Student Survey - Types of Misconduct



Of a total of 131 responses, forty-seven (35.9%) were the subject of a formal investigation. We then asked what happened in the case of formal investigations. There is an inconsistency with the data because only eighty-two students responded to the second question. Nevertheless:

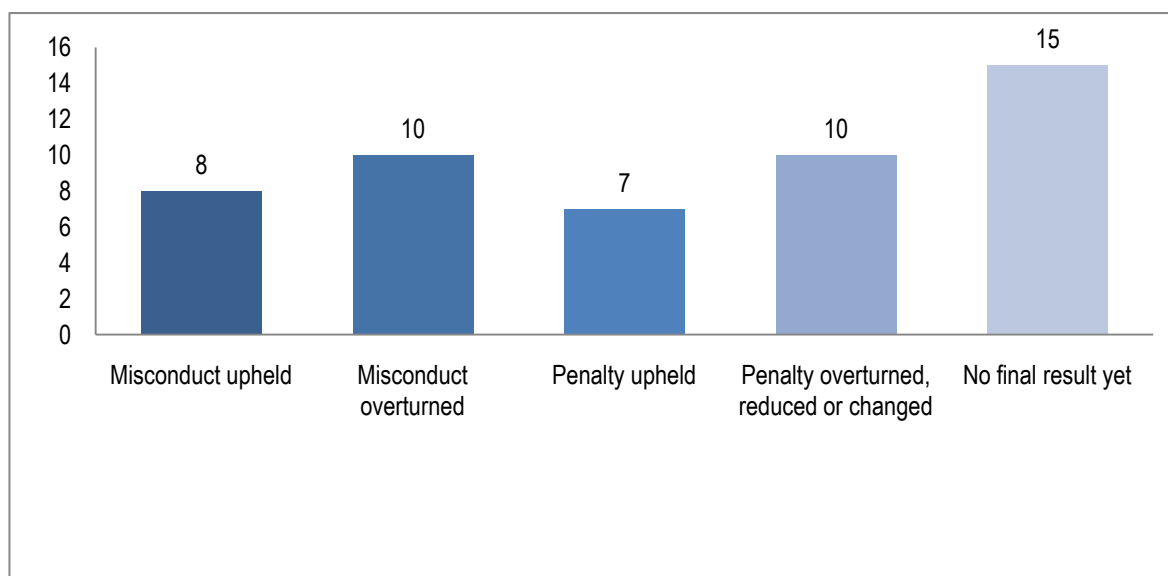
- (a) forty-nine (59.8%) reported that the allegation was dismissed;
- (b) eight (9.8%) reported they were found guilty of misconduct, but no penalty was imposed; and
- (c) twenty-five (30.5%) reported that they were found guilty of misconduct and that a penalty was imposed.

The next part of this section dealt with students' experiences of appeals processes.

Again, there is an (inexplicable) inconsistency in the data, in that forty respondents said they appealed the decision, but only thirty three answered that they had been found guilty of misconduct. Of these, approximately an even number of respondents said that they had appealed the finding of misconduct, the penalty or both.

Of those respondents who said they appealed (and multiple responses were allowed in this question), thirty-nine said they had used internal appeals process, and three said they appealed to a state or territory ombudsman. None reported that they appealed to a court or tribunal. The results for those appeals are shown in Table 18:

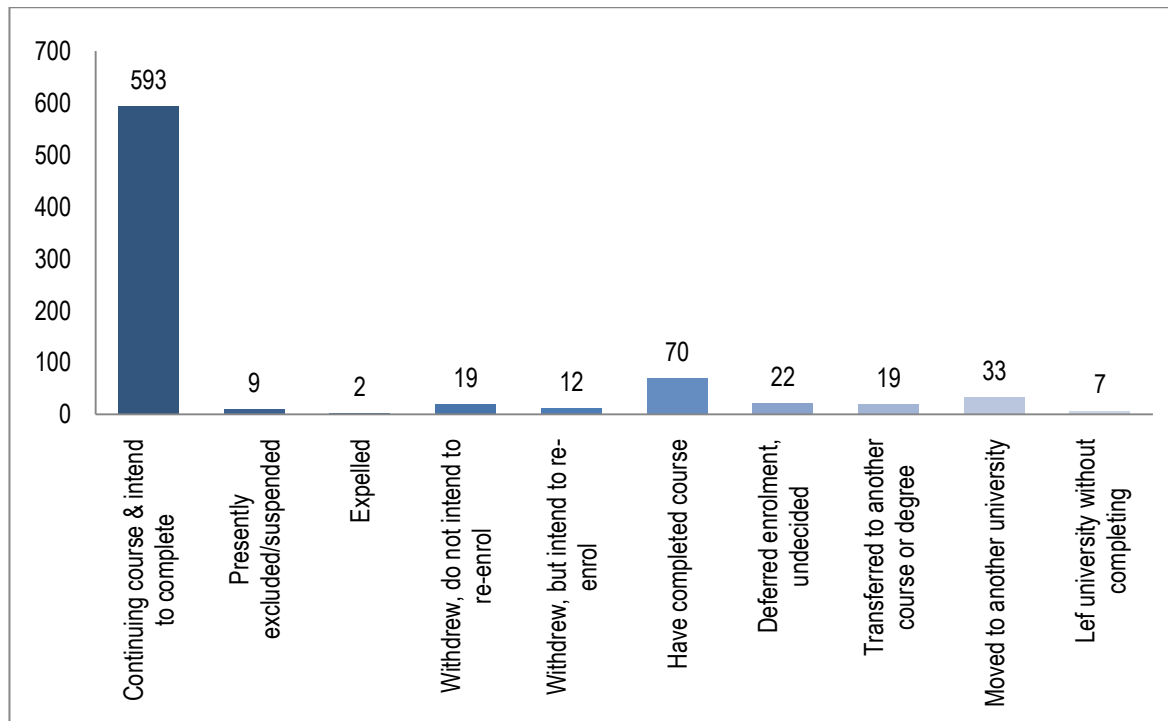
Table 18: Ch 6.1 – Student Survey - Final Outcome of Appeal



6.2.5 Effect on studies

The final section of this survey asked respondents how their experience of complaints or misconduct affected their studies. We asked this question because we consider that outcomes of complaints or appeals are critical to understanding a student's learning experience. Responses were as follows (and only 830 of 1577 students answered this question):

Table 19: Ch 6.1 – Student Survey - Effect on Studies



Thus, a large majority (71.4%) indicated they were presently continuing with their studies and intended to complete the course, followed by those students who said they had already completed their course. However, there is still a significant minority (about 14.8%) who said they did not complete their course, moved to another university or left university altogether.

6.3 Results from student interviews

6.3.1 Introduction

The student interview questionnaire was designed to gain a more detailed insight about themes explored in the student survey. As noted above, not all students who completed the survey were interviewed, and vice versa. Many students preferred to be interviewed, so that they could relate their experiences in their own words, rather than within the limitations of a survey.

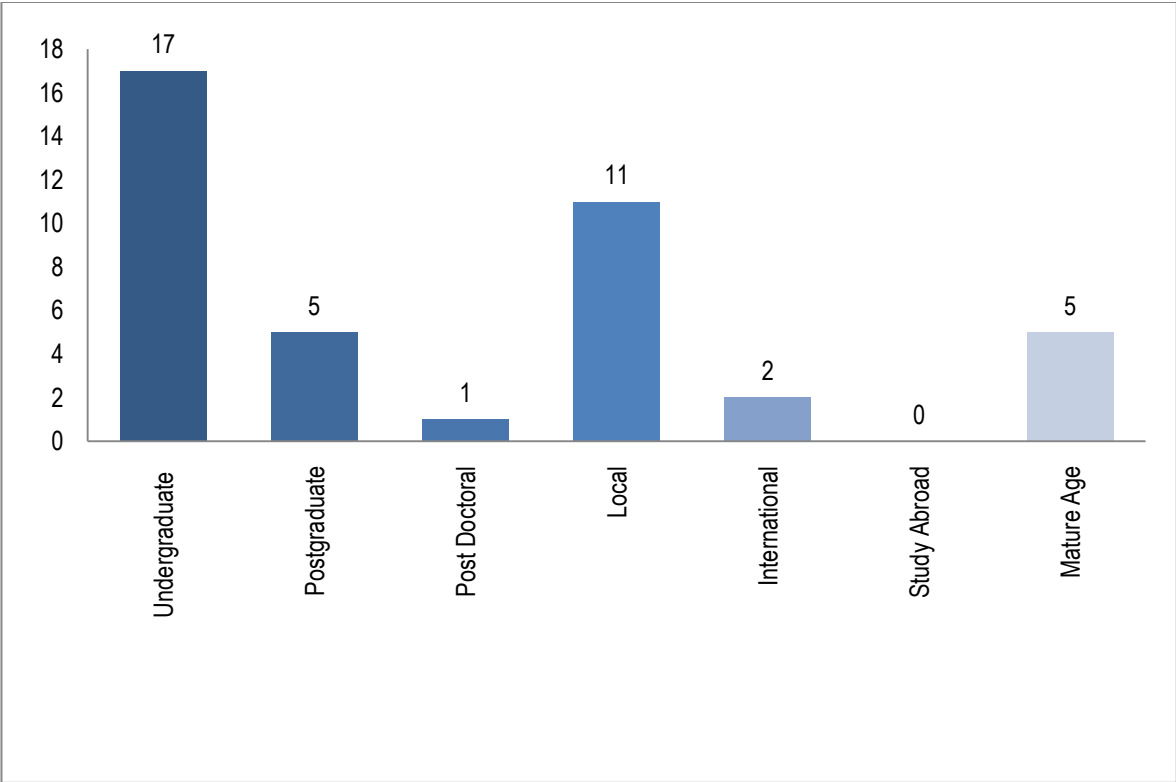
As with the student survey, the interview questionnaire was organised into the following themes:

- (a) the demographic of students who make complaints or who are the subject of disciplinary proceedings (or both);
- (b) the type of complaint;
- (c) the student's experience of internal processes (and, if they utilised them, any external processes);
- (d) resolution of the complaint or appeal;
- (e) impact on the student's studies.

6.3.2 Profile of students

We interviewed a total of twenty-two students. Their profiles at the time of their complaint were as follows:

Table 20: Ch 6.3 – Student Interviews - Interviewee Profile



Of the students interviewed, fifteen (68%) were aged thirty years and over. The trend for participation from students in this age bracket was explained by one interviewee, who was motivated to take part in an interview because younger students would be less inclined to speak out:

“... because of the power imbalance ... they are disadvantaged.”

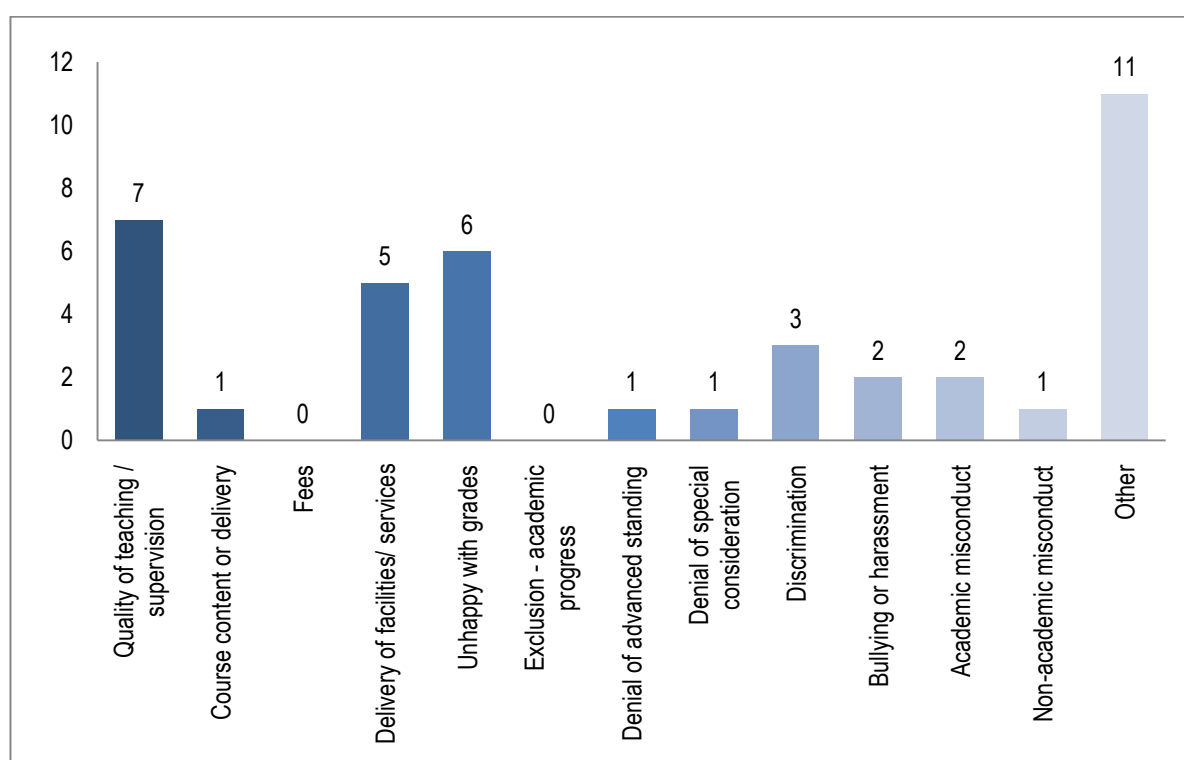
Indeed, this perception of power imbalance was a recurrent theme throughout our interviews with students (and student associations) and, in some cases, staff. There were many references to universities as bureaucratic institutions with power and resources behind them. One student commented:

“By the time a student goes through the processes they are left disillusioned and scared.”

6.3.3 Types of complaints

We used slightly different complaints categories from the survey, in order to *drill down* further:

Table 21: Ch 6.3 – Student Interviews – Types of Complaints



The “other” category figured as the largest with eleven responses. On closer inspection, however, this category appeared in many cases to serve as a means for a further explanation to the “other” categories, such as closure of courses or campuses. However, some complaints were multi-faceted and overlapped categories. For instance, a complaint about academic progress might arise out of denial of credits for courses undertaken at another institution and being given wrong information by faculty staff about how those credits would be treated.

Examples of being given wrong information featured strongly in the interviews; one student complained of being given a reduced mark for a late assignment, after being told that he had been granted additional time. One international student complained about being given wrong information about the amount of credit transfer to be granted, only to find out upon arrival in Australia of a requirement to undertake an additional year’s study. Another international student claimed to have been told before enrolment that there would be no English test required to register with the relevant registration board after graduation, but said that one year later that the rule had changed and that the university had not given notice about that change. Another student complained that, despite being told that clinical placement was a compulsory component of the degree, the placement was not available at the designated point in the course, which resulted in the student being unable to progress through the degree.

Complaints about quality of teaching or supervision were the second largest category, particularly from postgraduate students. Examples included disagreements with supervisors over the direction of the student’s thesis, supervisors suddenly resigning from the university or going on extended leave and being caught up in interpersonal disputes between rival academics or other students. Many claimed they lost valuable time in trying to complete their thesis.

The third largest category of complaint was dissatisfaction with grades (28.6%). These ranged from failure by a faculty to follow its policy of averaging marks out where faculties lose assignments (resulting in a lower mark for the student), or not being given enough credit for completion of a subject at another university after being given wrong information.

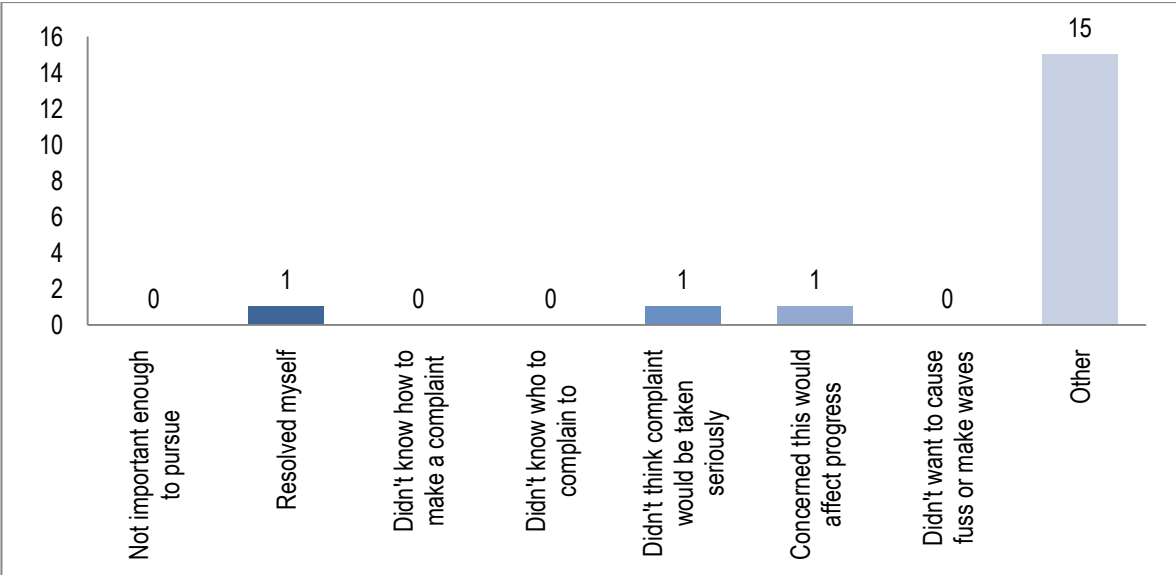
As discussed in Chapter 3, the high numbers of actions framed as discrimination are not reflected in survey or interview responses. Most complaints of disability discrimination arose from complaints about not being given reasonable accommodation for their disability, including approval of special consideration applications during examination time or provision of teaching and learning aids or support.

6.3.4 Experience with internal complaints process

This section dealt with students’ experiences with their university’s internal complaints process. We asked students whom they had first approached about their complaint. Sixteen interviewees said they first approached someone in their faculty or school about their complaint, ten of whom said they first approached their lecturer or course coordinator. Two students said they “went straight to the top”, and approached senior university staff or university council members about their complaint.

As with the survey, we asked interviewees whether they had pursued their complaint. Those who said they did not indicated the following reasons for not doing so:

Table 22: Ch 6.3 – Student Interviews – Why Complaint Not Pursued



Again, “other” reasons formed the largest category of reasons. Examples included not pursuing after receiving advice from a student ombudsman or student association, being told that the university believed the complaint was resolved (the student disagreed, but said felt it was better to “move on” and complete her studies rather than pursue the matter). Another student said he felt it was “futile” after making some initial inquiries; his perception was one of power imbalance.

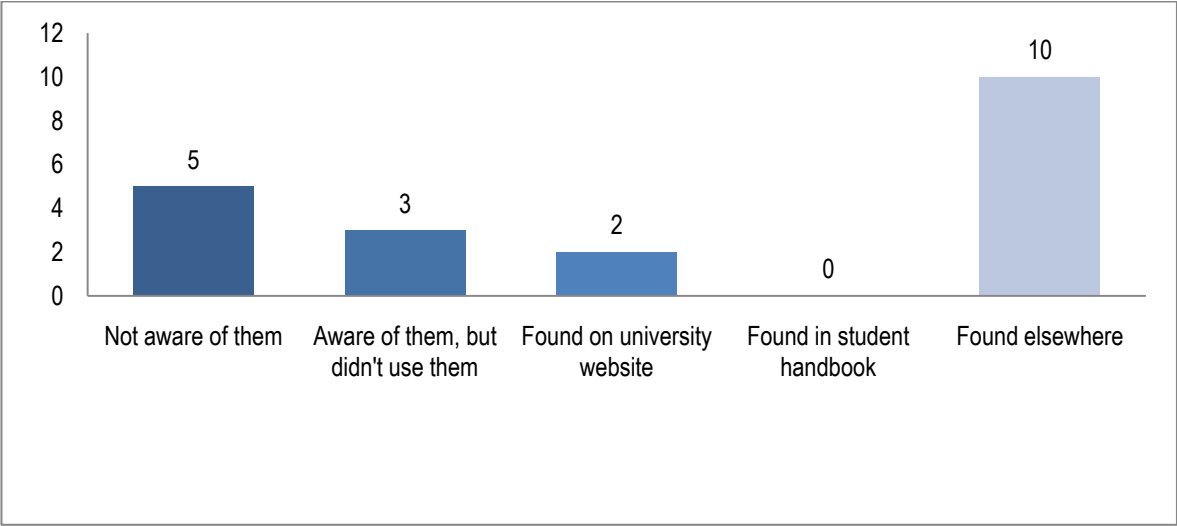
Interestingly, some interviewees expressed concern about the independence and ability of university ombudsmen to relate to students' circumstances. They felt that university ombudsmen represented the institution and were there to "uphold the *status quo*". Two students also complained about lack of support from their student associations: one in particular complained that the student association seemed only interested in supporting students accused of plagiarism.

In contrast to the results from the survey, 50% of interviewees claimed their complaints were still not resolved when they were interviewed. Of those who claimed their complaints were still unresolved, 58.3% said they had raised their complaints more than one year ago.

We questioned interviewees about their familiarity with their university's processes for complaints handling. Most universities have a charter or other type of document setting out students' rights and responsibilities. Only about 32% of students interviewed were aware of their university's charter. Of these, only 25% indicated that they had actually read it.

We also asked interviewees how they accessed information about their university's complaint handling or appeals procedures. The responses were as follows:

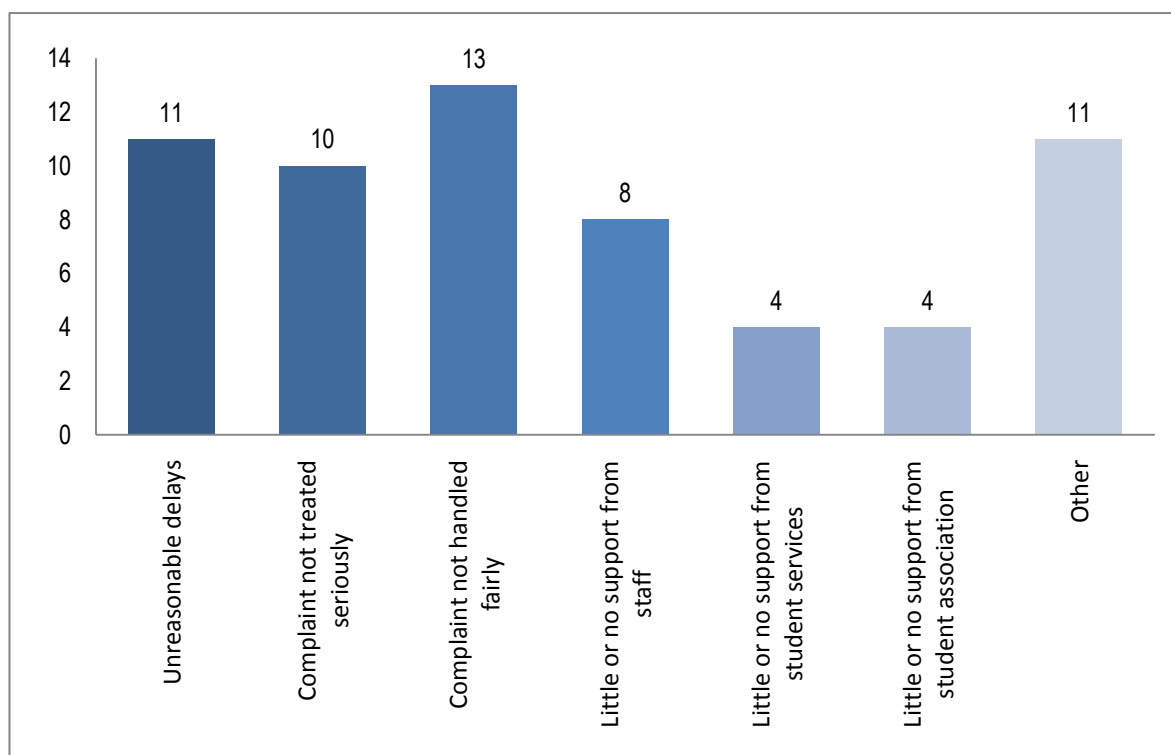
Table 23: Ch 6.3 – Student Interviews - Awareness Of/Access to Procedures



Five students indicated that they were not aware of their university's complaints or appeals processes at the time of their complaint. Two students found them on the university's website, but the majority of them said they relied on other sources for information, such as their student association, faculty staff or university counselling service.

We also asked interviewees about any difficulties they encountered in the handling of their complaint or appeal. Most interviewees encountered more than one type of difficulty, but they generally fell into the categories listed in Table 24:

Table 24: Ch 6.3 – Student Interviews - Difficulties Encountered With Complaint



The biggest source of discontent was a perception that complaints were not being handled fairly: students commented that they felt “disheartened”, “demoralised”, “a sense of futility”. One student expressed feelings of lack of self-worth. Another explained his experience as being of “David and Goliath” proportions”.

About 50% of students interviewed also were concerned about delays in handling their complaints. One student complained that:

“... it took three months just to organise a meeting of staff to discuss my problem.”

In the “other” category, students expressed a variety of concerns, such as feeling intimidated by the process (described as “adversarial”). Again, the issue of independence of the student ombudsman featured in these responses. One student complained that she was treated somewhat dismissively and made to feel as though her complaint was “vexatious”.

Lack of communication between staff was also cited as a significant “other” problem. Many students felt their complaint could have been resolved quickly with better communication between academic and administrative staff – particularly where the complaint arose from wrong information being given to students. In one case, a student said that he discussed his problem with his lecturer, and that they agreed upon an outcome. However, the lecturer did not tell other staff to action the outcome, and subsequently went on leave. The student said it took three months to resolve.

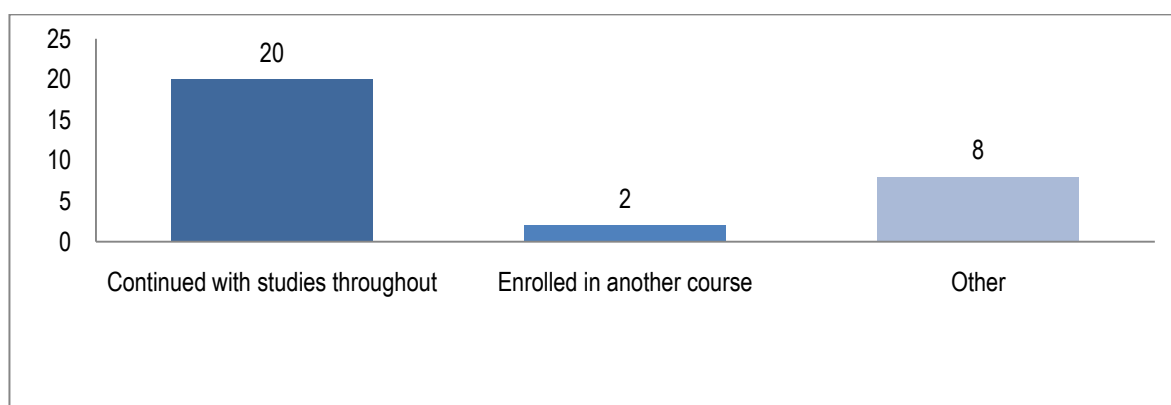
6.3.5 External complaints

Five of the students we interviewed pursued their complaints externally to state or territory ombudsmen (one), DEEWR (one), court or tribunal (two), local parliamentary member (one), an occupational health and safety authority (one) and a professional registration body (one).

In those cases that were finalised, most students were dissatisfied with the process (and the length of time involved) and/or the result. One student commented that even though the complaint had been resolved by mediation, the university had later “renege” on the agreement reached.

As with the survey, we asked interviewees about the impact of their experiences on their studies. They reported as follows:

Table 25: Ch 6.3 – Student Interviews - Impact on Studies



The majority of interviewees continued with their studies and, in some cases, have since completed their degrees. However, most of these students had very negative feelings towards their university. A number of them said to the effect that:

“I just want to finish my degree and get out of here.”

In the “other” category, a significant proportion of students cited financial loss (through additional HECS or fees), as well as delays in completing their degrees and getting into the workforce.

One significant impact cited by students across all categories was feelings of anger and stress at their universities. Many of those who said they continued also said that they wanted to move to another university, or just leave, but felt they were too far into their degree and did not want to “throw it all away”.

Although it was not included as a question, a number of students interviewed commented that they were working part-time or full-time and, in some cases, had families to support. So, it is not surprising that many of these just continued with their studies, given their financial stake in their education.

6.4 Recurrent themes

Recurrent themes from the student surveys and interviews can be summarised as follows:

- it is difficult to get a clear picture from surveys and interviews of the typical profile of student complainants, although international students appear to be overrepresented. However, the surveys and interviews for this project were conducted as random samples, and all participants in the sample had, in one way or another, been involved in a complaint or allegation of misconduct;
- the vast majority of complaints included some element of assessment, followed by quality of teaching and learning issues. Incorrect information also featured as a significant source of discontent. Moreover, we found that complaints do not always fit neatly into one category – they often have a number of aspects to them;
- there is a considerable degree of mistrust and cynicism among students about obtaining a fair hearing of their complaints;
- students have difficulty in accessing information and talking to staff about their problems or concerns, particularly before they escalate into a formal complaint;
- students who have been through the process may still go on to finish their degree, but they harbour strong feelings and resentment at what they feel is a system that is “stacked” against them.

7 Chapter 7 – Student association perceptions

7.1 Introduction

In this chapter, we set out the results from interviews with student associations.

The purpose of interviewing student associations (both undergraduate and postgraduate) was to gain their insight about the types of students who are making complaints, what they are complaining about and how well they think universities are dealing with them.

As with the student interviews, questions were organised into five main themes: profiles of students, types of complaints, experiences of internal complaints processes, external complaints and impact on students' studies.

7.2 Results from student association interviews

7.2.1 Introduction

We interviewed representatives from sixteen student associations. Most student associations represented both undergraduate and postgraduate students, but a few of them represented one category exclusively. Most representatives interviewed were student advocates or welfare officers.

We found it difficult to get reasonably accurate information about numbers of complaints dealt with (even within a specified period of time like three years), because of the different lengths of time that interviewees had acted in their roles. Some had only been in the role for less than one year.

In addition, and like most universities, student associations have not historically maintained central databases of information about complaints, although we were told that many universities now require them to do so as part of accountability requirements in the wake of VSU. However, this appears to be a very recent development. The type of information that they now record varies, but by and large includes the following:

- (a) whether the student is undergraduate or postgraduate;
- (b) age;
- (c) if applicable, disability;
- (d) if applicable, whether Aboriginal or Torres Strait Islander;
- (e) whether local or international;
- (f) what the complaint is about;
- (g) the faculty/school or campus involved.

Thus, the information set out in this Chapter reflects the above limitations.

7.2.2 Types and numbers of complaints

Responses to the question of whether numbers of complaints had increased were patchy and varied. As mentioned, some interviewees had only been in their role for less than a year and were unable to identify any trends in the absence of any centralised record-keeping. Another said that numbers had remained steady over the last two years; yet another said that while complaints had increased in particular faculties or schools, they had remained steady for the university overall.

Despite the difficulty in obtaining data, the trends in types of complaints appear to be academic progression (including assessment and exclusions) followed by academic misconduct (particularly plagiarism). Wrong information from university staff also featured as a common source of complaint, for instance, particularly enrolment information and how university policies and rules are applied (for example, in relation to special consideration or credit transfer).

Expectations about group work featured as part of academic progression complaints. A number of interviewees felt that international students are over-represented in this group. One interviewee commented that a large contributor to this is that international students tend to work with their own cultural groups because it is easier for them to communicate with each other. In the case of local students (in this context, those whose first language is English), they are reluctant to work with international students not only because of language barriers, but a perception that international students will “drag them down”.

Complaints involving postgraduate research students were seen as usually involving more serious and multiple issues, given the close interpersonal relationship between student and supervisor, even though there are fewer of these. One interviewee commented that there can tend to be a “mismatch of personalities” which results in supervisors and students not being able to communicate with one another.

One interviewee also suggested that one type of complaint will often be triggered by something else. For instance, an appeal of a grade may be triggered by a complaint of poor quality teaching.

7.2.3 Profiles of complainants

From the data we obtained from interviews, student associations identified complainants as falling into one or more of the following categories (in this descending order): male, international (but not those on a study abroad program) and undergraduate students. However, the category of undergraduate complaints obviously does not apply to those student associations that represent postgraduate students exclusively.

For misconduct allegations, about 70% of interviewees identified these as usually being undergraduate and male. One interviewee identified young males in the eighteen to nineteen age groups as tending to be involved in collusion on assignments or group work, and suggested that this might be because “older students tend to know about the rules”.

We asked interviewees whether they had experience of unreasonable or unreasonably persistent complainers, and about 88% said that these formed only a very small number of overall complaints (between 3% and 5%), although they tended to take up resources far in excess of that. One interviewee commented that, in her experience, the complaint itself may not be unreasonable, but the complainant may behave unreasonably, often because of mental health issues.

Another interviewee commented that, even in cases where the student association feels the complaint is unreasonable, they see their role as supporting the student if the student still wants to proceed after being advised not to do so by the student association. In that person’s view, the role of the student association “is not to judge them, but to support them”. However, this view was not shared by everyone. Another interviewee expressed a preference for student associations assisting students to resolve problems themselves early on, rather than engaging with the university’s complaints system. This person also expressed the view that simply helping a student to “take on” a university’s complaints system was not always in the best interests of the individual student.

7.2.4 Reasons for pursuing complaints

We asked interviewees whether they felt that students now more readily pursue complaints against universities for any of the following reasons:

- (a) students have higher expectations of universities;
- (b) they see themselves as consumers of education;
- (c) they have much more at stake.

Overall, more than half of interviewees agreed with all three reasons. Interviewees commented that students were under much more pressure to obtain their degree and get into the workforce, particularly with the changes to higher education support under the Howard Government. A number commented that international students were under particular pressure because of strict visa conditions requiring them to complete their degrees within specified periods of time. Accordingly, interviewees thought that international students were more likely to seek review of their marks.

7.2.5 Reporting complaints

We asked interviewees whether they had personal experience of students not reporting their complaint to their university for the following reasons:

- (a) the student did not feel the problem was important enough;
- (b) the student solved the problem themselves;
- (c) the student did not know how to make a complaint;
- (d) the student did not know to whom to complain;
- (e) the student did not think their complaint would be taken seriously;
- (f) the student was afraid complaining would affect their progress throughout their course;
- (g) there was a cultural or other reluctance to cause a fuss or “make waves”.

Most interviewees reported having experienced students not pursuing complaints for one or more of the reasons above. A number of interviewees felt that one way to overcome these obstacles was for universities to provide greater orientation and induction to students, particularly school leavers and international students.

7.2.6 Complaints processes and resolving complaints

We asked interviewees to answer questions about their experiences and perceptions of their university's complaints processes. Most interviewees told us that more than 70% of complaints they deal with are resolved internally using the university's processes. About 57% interviewees said most complaints they had dealt with took between one and three months to resolve, followed by less than one month. None had had experience of a case taking more than one year to resolve.

The types of cases that interviewees felt took longer to resolve were complaints involving multiple issues, particularly where interpersonal issues between students and staff were involved. Academic progression issues (including assessment, exclusion, credit transfer, etc), quality of teaching or supervision and wrong advice were also nominated as issues that tend to take longer to resolve.

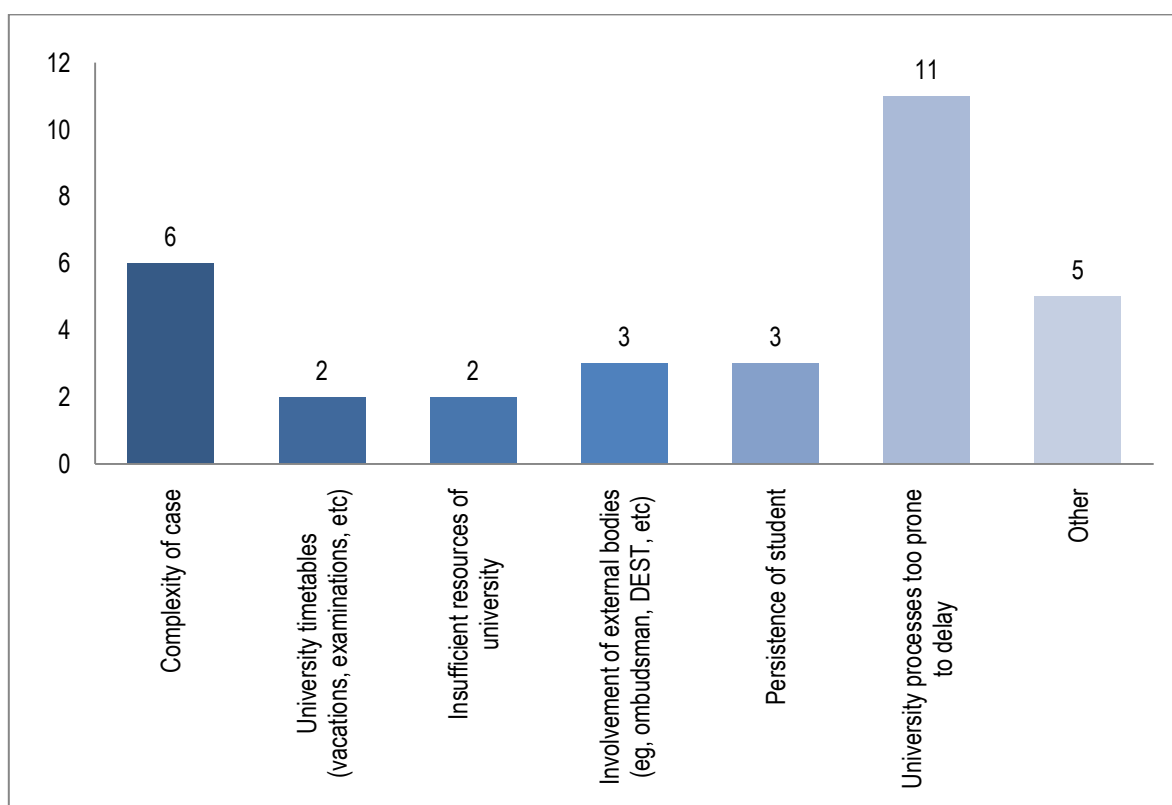
One interviewee identified placement issues in the health and social science disciplines as problematic. Placements are not always available at the appropriate stage of a student's course, which can have significant consequences for students enrolled in degrees with compulsory clinical or fieldwork components.

The importance of resolving complaints internally was stressed by a significant proportion of interviewees. When asked about the numbers of complaints that are resolved internally, 73.3% of interviewees estimated this as being more than 70%. Interviewees suggested (and that view is supported by the data) that

grievances that can be resolved internally take much less time overall to resolve and also have less financial and emotional consequences for students.

We asked interviewees the reasons why they think some cases may take longer than others to resolve. Their responses are shown in Table 26.

Table 26: Ch 7 – Student Association Interviews - Why Some Complaints Take Longer to Resolve



The major reason cited for delays involved failure to detect problems early and unclear university processes. Some interviewees also cited too many stages in a process as contributing to delays. Most noted that investigations could also cause delays, depending on the complexity of the issues being investigated and availability of witnesses.

Inadequate training was also cited as a significant contributor to delays, which resulted in staff being less inclined to engage with complaints. A number commented on the need to better train staff to deal with low level misconduct so that it does not escalate unnecessarily.

Staff absences in schools and faculties were cited as one factor: a number of interviewees said that many academics are now employed as casual staff, and are therefore often not available to discuss assessment with students after the end of semester.

Although we did not ask questions about the impact of VSU, this was raised repeatedly by interviewees as a contributing factor because of the reduced advocacy services student associations were able to offer. It was suggested that student associations play an important role in student-university disputes because they see themselves as providing independent advice. One of the strongest criticisms of university systems is the lack of confidence students have in them, which they say is caused primarily by a perceived lack of impartiality.

7.2.7 Effect on studies

We asked interviewees if they could identify the effect on study programs of students who make complaints or are the subject of misconduct allegations. Many interviewees were unable to give definitive answers because this is not an issue they tend to follow up with students once they stop engaging with the student. However, they felt that most students probably continued with their program, although their performance might suffer. One postgraduate student association commented that postgraduate students are particularly vulnerable if there has been a dispute with their supervisor: not only is their relationship with their supervisor damaged, but it may also affect their relationships with other students who share the same supervisor.

7.2.8 Costs of not resolving complaints internally

We asked interviewees if they could identify the costs to the university (apart from legal costs) where complaints could not be resolved successfully using internal processes. Although we asked this as an open-ended question, we included some possible answers, such as staff morale, attention from statutory and other regulatory bodies (e.g., state or territory ombudsmen).

Some interviewees were unable to provide us with anything more than a general perception because of their disengagement with students once a complaint is resolved or finalised.

However, a small majority (53.8%) felt that staff morale and health usually suffers badly, and about 60% felt that universities only rarely or sometimes receive bad publicity. One interviewee observed that “publicity is the only armoury/weaponry we have”; another said “we will definitely go to the public or the press if we need to, but this depends on the confidence of the student representatives.”

About 60% of interviewees felt that universities only sometimes attract attention from statutory or other regulating bodies. One interviewee also said that the reputation of the university can suffer badly, particularly for complaints involving international students – the reason being that international students seem to have quite effective networks in their home countries.

7.2.9 Other issues

We asked interviewees whether they agreed or disagreed with a series of statements focussing on the effectiveness of student ombudsman, central database of complaints, staff training and effectiveness of university procedures.

The results were as follows:

- (a) about 68% of interviewees supported the role of a student ombudsman. Those who did not had the following concerns: first, that student ombudsmen are not adequately trained, are ineffective, and perceived as not being truly independent; and second, that the role tends to focus too much on due process, thus becoming a risk management tool, rather than a means of genuinely trying to resolve complaints in a way that promotes equitable outcomes, particularly for academic appeals;
- (b) about 90% of interviewees agreed that universities should centrally record complaints and where they come from within the university. They felt that this would assist to identify and systemic problems. As noted above, many universities are in the process of implementing systems to record complaints, and are also requiring student associations to do so;
- (c) over 90% of interviewees agreed that universities need to do more to deal with complaints more effectively and to better train staff in complaint handling;

- (d) while most interviewees agreed that university policies, for the most part, were comprehensive and designed to deal with a wide range of complaints, about 62% of those disagreed that these were easy for students to access and understand, even if those policies were, on the whole, reasonably fair. Responses varied on the statement that university processes are too focused on complaints categories and have too many processes or stages. Those who agreed with this statement (about 47%) felt that too many stages sometimes contributed to escalation of complaints or disputes; and that it would be better if universities put more effort into training staff to engage with problems at an earlier stage. One interviewee also felt that universities tend to design their procedures with too much focus on staff rights, rather than student rights.

7.2.10 Mediation

We asked interviewees whether they thought many of the complaints that they had dealt with could have been resolved using mediation or other forms of alternative dispute resolution as part of the university's internal process.

About 68.6% thought that mediation had an important role to play, and 25% were unsure whether it would be suitable for all types of complaints or appeals. Those in both categories felt that mediation was unsuitable for complaints involving significant power imbalances, and emphasised that while it may be useful in some cases, it should not be imposed as part of an internal process.

The area of complaints identified as most suitable for mediation was quality of teaching or supervision, followed by disputes about academic decisions and (if appropriate) complaints about discrimination, bullying and harassment.

7.2.11 National student ombudsman

We asked interviewees whether they supported the idea of a national student ombudsman. Responses were somewhat qualified and indeed, prompted questions of us as to what model we had in mind. When we pointed them to the Independent Adjudicator model adopted in the United Kingdom as an example, many said they had not heard of it.

As a result, responses were fairly mixed, although most (about 69%) agreed that if such a model were established, then it should only handle complaints or appeals once internal processes were exhausted. Those who expressed support for a national student ombudsman thought this would be more objective than an internal student ombudsman.

Those who did not support a national student ombudsman did so for a variety of reasons: some questioned the need for it, given existing state and territory ombudsmen regimes in place; others had concerns about the length of time it would take to finally resolve complaints and appeals. More importantly, however, those who disagreed generally felt that more effort should be put into resolving complaints internally at a much earlier stage and, in particular, addressing issues such as delays due to staff absences and promoting better coordination between central university administrations and faculties and schools.

Some interviewees also felt that students and student associations could play a more positive and active role through more involvement in a number of areas, such as development of rules and policies, representation on committees (such as appeals committees) and making decisions affecting students and induction programs.

7.3 Recurrent themes

Recurrent themes that emerge from these interviews can be summarised as follows:

- (a) it is difficult to get a clear picture of the typical profile of the student complainant because of record-keeping limitations, but again, international students are overrepresented;
- (b) most complaints that student associations deal with involve complaints about assessment, findings of academic misconduct or wrong information about academic issues such as special consideration or credit transfer (or any combination of these);
- (c) frustration was expressed at the length of time taken to resolve complaints. Our overall impression from interviewing student association representatives was that while they harboured misgivings and frustration about the way in which complaints are handled, they were mostly aware of some obstacles that university staff can face, such as lack of proper training. We also had the impression that student associations are keen to work with universities to improve processes, and do not simply take a “us and them” approach;
- (d) the impact of VSU on the ability of a number of student associations to provide assistance to students also recurred throughout these interviews, even though this was not one of the research questions posed by this project.

8 Chapter 8 – Staff perceptions

8.1 Introduction

In this Chapter, we set out the results from the on-line staff survey and interviews.

8.2 Staff surveys

The purpose of the staff survey was to gain an insight into:

- (a) the demographic of students who make complaints or who are the subject of disciplinary proceedings (or both) in which those staff become involved;
- (b) the types of complaints they are dealing with;
- (c) the types of processes that their university has in place for dealing with them;
- (d) how well they perceive those processes work;
- (e) results of staff survey.

A total of 575 respondents participated in this survey, however, as with the students, not all of them answered every question, which is reflected in the results in Table 27.

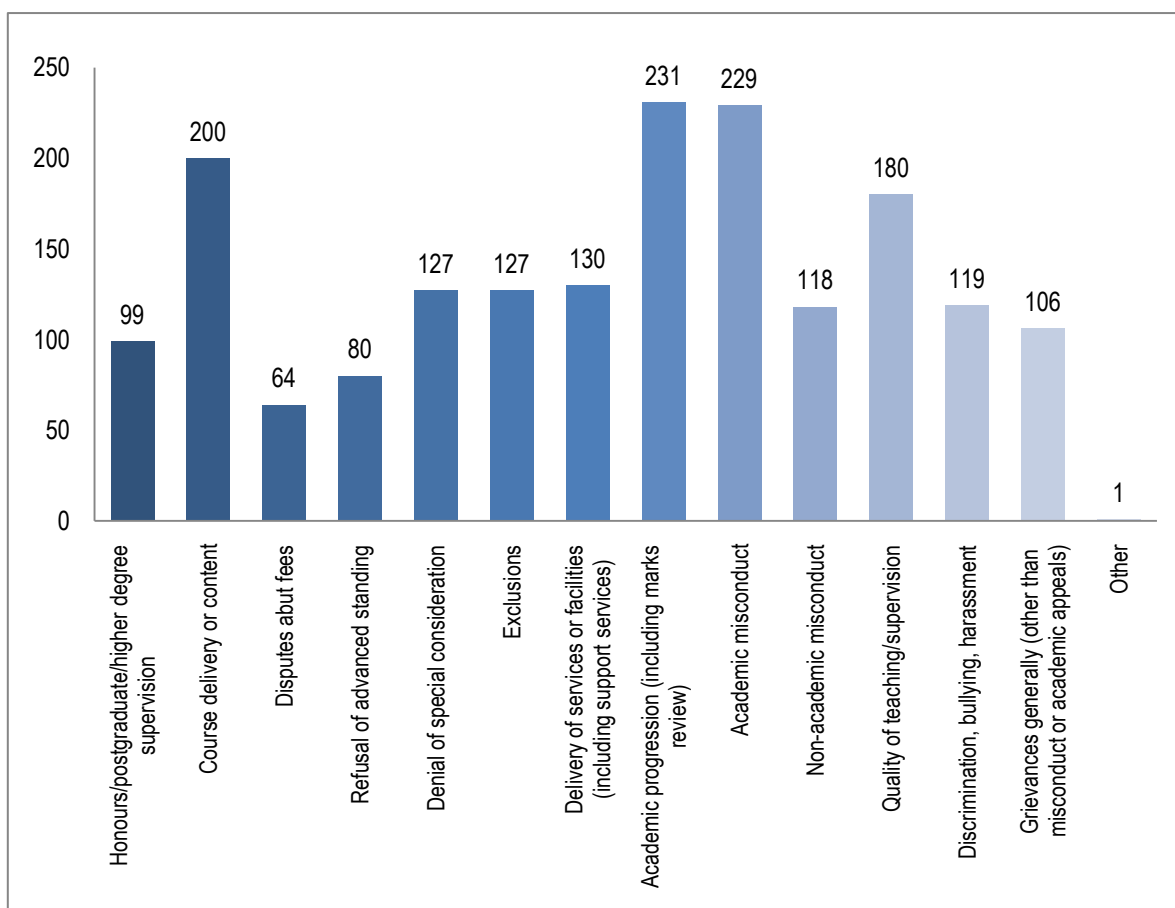
Respondents to the survey were fairly evenly split between academic and general staff (including university counselling staff), and fourteen identified their role as a student ombudsmen or a dean of students. In some cases, there were significant differences in perceptions of academic and general staff, which are discussed in more detail in this Chapter.

8.2.1 Types of complaints

We asked respondents what types of complaints they dealt with routinely in their role. The two most common types of complaints were academic progression and academic misconduct, with course delivery and quality of teaching or supervision being the next most common. The following should be borne in mind:

- (a) respondents could record more than one type of complaint;
- (b) depending on their role, it is conceivable that different respondents from the same university could be involved in the same complaint or appeal, but at different stages of that process.

Table 27: Ch 8.1 – Staff Surveys - Types of Complaints



There was a significant difference between the types of complaints dealt with by academic and general staff. Academic staff were more likely than general staff to deal with issues relating to course delivery or content, academic progression, academic misconduct and quality of teaching and supervision; whereas general staff were more likely to deal with issues related to disputes about fees, exclusions, delivery of services or facilities, non-academic misconduct and general grievances (except academic or misconduct appeals).

8.2.2 Profiles of students

We sought responses about the types of students that staff perceive are more likely to make complaints. Responses varied widely, and much seems to depend on the role that the respondent plays in the process. However, a few things stand out:

- very few thought that study abroad or postdoctoral students were more likely to make complaints, although almost 50% of them stated that they did not know;
- high proportions of respondents (around 45%) thought that undergraduate and mature age students were more likely to complain;
- the responses for local and international students were roughly the same, with about one third for each saying this group is more likely to make a complaint;
- more than half specified no difference for male or for female students.

In the end, the staff survey did not reveal any particular profile of students more likely to make complaints.

We asked respondents to nominate types of students that they perceive were more likely to be the subject of allegations of misconduct (meaning, both academic and non-academic misconduct). Responses again varied, depending on the role of the respondent, although:

- (a) as with the previous question, very few respondents thought that study abroad or postdoctoral students were more likely to be the subject of misconduct allegations, although 50% stated they did not know;
- (b) less than 10% of respondents thought that females, postgraduate or mature age students were more likely to become the subject of misconduct allegations;
- (c) the figures for males and international students are each around 38%, and the figure for undergraduates is 51% for misconduct allegations.

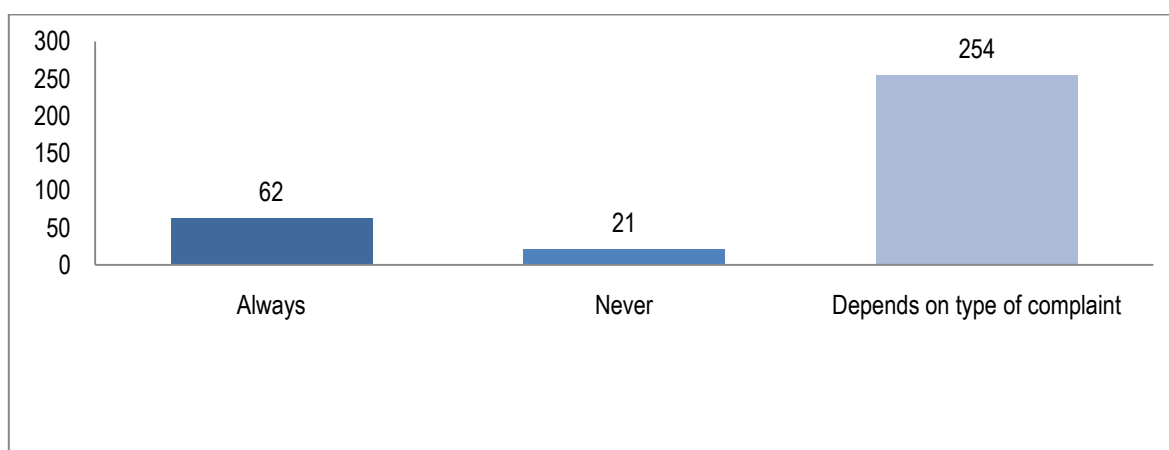
Thus, the responses for misconduct indicate that undergraduate males appear more likely to be the subject of allegations of academic or non-academic misconduct, with a sizeable proportion of them (about 38%) being international students.

8.2.3 Complaints handling processes

We asked respondents a number of questions about the way in which complaints are handled at first instance at their universities.

First, we asked whether a student has to make a complaint (except an appeal) in writing before they can act on it. Responses are set out in Table 28.

Table 28: Ch 8.1 – Staff Survey - Whether Complaints (Except Appeals) Must Be In Writing



There were significant differences between responses from general and academic staff, with 68.4% of general staff and 2.5% of academic staff saying it depended on the type of complaint.

We asked respondents whether they have a means of filtering out trivial or vexatious complaints at a preliminary stage, and 71.7% of respondents replied yes. In addition, 74.1% of respondents who answered the question (336 out of 575) said that their university offers mediation as a method of resolving complaints other than appeals.

We asked at what point a complaint (that is not an appeal) becomes “formal”. We asked this question because, in our review of university processes, many, if not most, universities tend to categorise complaints as *informal* and *formal*. A large proportion of respondents (about 40%) identified that complaints become *formal* when the problem or complaint cannot be resolved at first instance and is then pursued. A slightly smaller percentage responded that complaints become “formal” when the student makes a complaint in writing.

We also asked respondents to answer questions about the type and level of record-keeping for complaints maintained by their universities. About 75% of respondents who answered this question (328 out of 575) said that records were maintained either by that person's office or by the university centrally. However, around 60% of those respondents were unsure whether non-identifying statistical data (as opposed to file records relating to individual complaints) were kept as a means of tracking complaints. General staff (31.6%) were more likely than academic staff (11.2%) to know the answer to the question about non-identifying statistical data.

Respondents were asked for their views on the university's processes for dealing with complaints. Table 29 shows there was overwhelming agreement (more than 86% of respondents) that processes are fair and impartial to students and that mediation is a useful tool. For each of the next five listed statements between 60% and 75% of respondents agreed or strongly agreed. Respondents generally disagreed there were too many or too few procedural stages. More than 50% of the respondents disagreed with the statements that "staff who investigate or decide complaints are given adequate training" and "staff are given adequate support and assistance".

Table 29: Ch 8.1 – Staff Survey - Breakdown of Views About Processes

Statement	Strongly agree %	Agree %	Disagree %	Strongly disagree %	No of responses
Processes are fair and impartial to students	37.2	49.4	10.4	3.0	328
Mediation is a useful tool for resolving complaints	26.1	62.6	8.5	2.8	318
Students are given adequate advice and assistance about what to expect from the process	15.6	58.6	21.2	4.6	326
Current processes ensure consistent and fair outcomes	15.0	54.6	23.0	7.4	326
Complaints often take too long to resolve	17.8	42.3	38.0	1.8	326
Processes contain the right number of procedural stages	7.1	63.4	25.8	3.7	325
Processes are easy for students to find and understand	10.1	50.8	33.9	5.2	327
Staff who investigate or decide complaints are given adequate support and assistance	6.0	38.6	40.4	15.0	319
Processes contain too many procedural stages	7.4	15.1	73.8	3.7	324
Staff who investigate or decide complaints are given adequate training	6.9	27.7	47.7	17.8	321
Processes contain too few procedural stages	3.7	14.6	73.6	8.1	322

Responses differed significantly between general and academic staff, with the perceptions of academic staff being more negative about several of these statements.

General staff were more likely than academic staff to agree that current processes ensure consistent and fair outcomes (78.3% compared with 63.7%). Similarly, general staff were less likely than academic staff to agree with the negative statement that complaints often take too long to resolve (53.8% compared with 60.8%). In response to a question about adequacy of support and assistance, general staff were more likely than academic staff to agree (60.9% compared with 35.7%). A similar, but not as extreme, disparity occurred between responses from general and academic staff about adequacy of staff training (47.1% compared with 30.7%).

8.2.4 Student expectations

We sought responses to a series of statements (listed in Table 30) to measure how strongly staff felt about students' expectations and what might drive complaints or appeals. We asked respondents to indicate whether they strongly agreed, agreed, did not know, disagreed or strongly disagreed. As Table 30 indicates, respondents overwhelmingly agreed that students expect more of universities than they did three years ago, and pursue complaints more readily and persistently and, of those who agreed with those statements, a majority strongly agreed. A majority also agreed with the statement that complaints often reveal system failures in their university's processes, although who strongly agreed with that statement were in the minority. Respondents were split on whether they feel students' complaints are often justified, but of those who agreed with the statement, only 4.6% strongly agreed. Surprisingly, a significant minority (27.6%) indicated that they agreed that most students' complaints are trivial or vexatious. Given the responses to our questions concerning unreasonable and vexatious complaints (see Chapter 8.3.7), we concluded from this that staff responses focussed more on trivial complaints (which are not necessarily unreasonable or vexatious) rather than vexatious complaints.

Table 30: Ch 8.1 – Staff Survey - Breakdown of Perceptions About Complaints or Appeals

Statement	Strongly agree %	Agree %	Don't know %	Disagree %	Strongly disagree %	No of responses
Students expect more of universities than they did 3 years ago	46.4	33.7	12.7	6.2	0.9	323
Students complain more readily and persistently now than they did 3 years ago	38.0	29.9	17.3	14.2	0.6	324
Complaints by students often reveal systemic failures in the university's processes	14.2	48.3	10.5	25.1	1.9	323
Most students' complaints are justified	4.6	38.6	16.4	35.5	4.9	324
Students generally understand what is expected of them as a student	3.4	43.7	8.0	35.1	9.8	325
Most students' complaints are trivial or vexatious	5.9	21.7	14.9	50.9	6.5	322

Breaking down these responses between academic staff and general staff, academic staff were more likely to strongly agree with the statements that students complain more readily and persistently now than they did three years ago (48.7% compared with 24.8%) that most students' complaints are justified (48.4% compared with 32.4%), and were more likely to disagree with the statement that students generally understand what is expected of them as a student (55.5% compared with 35.8%). Academic staff (66%) were more likely to agree than general staff that most students' complaints were trivial or vexatious. The divergence in responses is perhaps not particularly surprising, given that academic staff tend to engage with students more often on a day to day basis than general staff.

We also asked respondents whether their university's complaints processes had been reviewed in the last three years. The results differed significantly between general and academic staff. Even allowing for the greater propensity of academic staff to answer "don't know", general staff were more likely to answer "yes".

If respondents answered "yes" to the previous question, they were asked to indicate whether they thought those changes had led to specified improvements. Table 31 gives the results in decreasing order of percentage of "yes" responses, which then increases the percentage of "no" responses. Two thirds of respondents to this question answered "yes" for "guidance for staff on their responsibilities towards students". This declined to 26% for those answering "yes" to "resources and training available for staff".

The responses were consistent for general and academic staff, except for “how quickly complaints are dealt with”, where general staff (46.9%) were more likely to answer “yes” than academic staff (31.3%).

Table 31: Ch 8.1 – Staff Survey – Process Improvements After Review

Improvement	Yes %	No %	No noticeable difference %	No of responses
Guidance for staff on responsibilities towards students	66.5	14.5	19.1	173
Guidance for students on what is expected of them when undertaking university studies	60.0	14.5	19.1	170
Consistency across university in how complaints are managed and resolved	47.1	26.7	26.2	172
How quickly complaints are dealt with	37.1	29.4	33.6	170
Training for staff in dealing with complaints	35.8	39.3	24.9	173
Resources and training available to staff	26.0	42.6	31.4	169

8.2.5 Staff training

We asked questions relating to training of staff for handling complaints and appeals. The results were somewhat disturbing:

- (a) Almost 60% of staff stated that they had never attended training. Only 15.4% had attended training in the last twelve months, 11.7% in the last 1 to 2 years and 14.2% more than two years ago; and
- (b) Of those who indicated that they had attended training, 78.9% said that training was voluntary.

Finally, we asked those respondents who had attended training to rate it. Most were favourable in terms of relevance, practicality and improvement in their understanding about the university's processes and staff responsibilities.

Table 32: Ch 8.1 – Staff Survey - Value of Training

Statement	Strongly agree %	Agree %	Disagree %	Strongly disagree %	Total responses
The training was relevant to my current role	19.1	36.4	3.1	0.9	225
I was able to apply the training in a practical way	15.3	39.2	2.3	1.8	222
The training has improved my understanding of the university's processes and my responsibilities when administering them	15.2	35.7	5.4	2.2	224

8.3 Staff interviews

8.3.1 Introduction

The staff interviews cover similar themes as the staff survey, but their purpose was to cover the areas more comprehensively and gain a more detailed insight and understanding. As with students, not all who completed the survey were interviewed, and vice versa.

We interviewed a total of fifty-one staff of whom about 23.5% also completed the survey. Importantly, the majority of interviewees (61.8%) claimed their responses to be reflective of the institution as a whole as opposed to the specific areas in which interviewees were employed. Of the staff we interviewed, thirty were academic staff members and twenty-one were general staff members. Of these, ten were student ombudsmen, deans of students or employed or engaged in another centralised complaint resolution role.

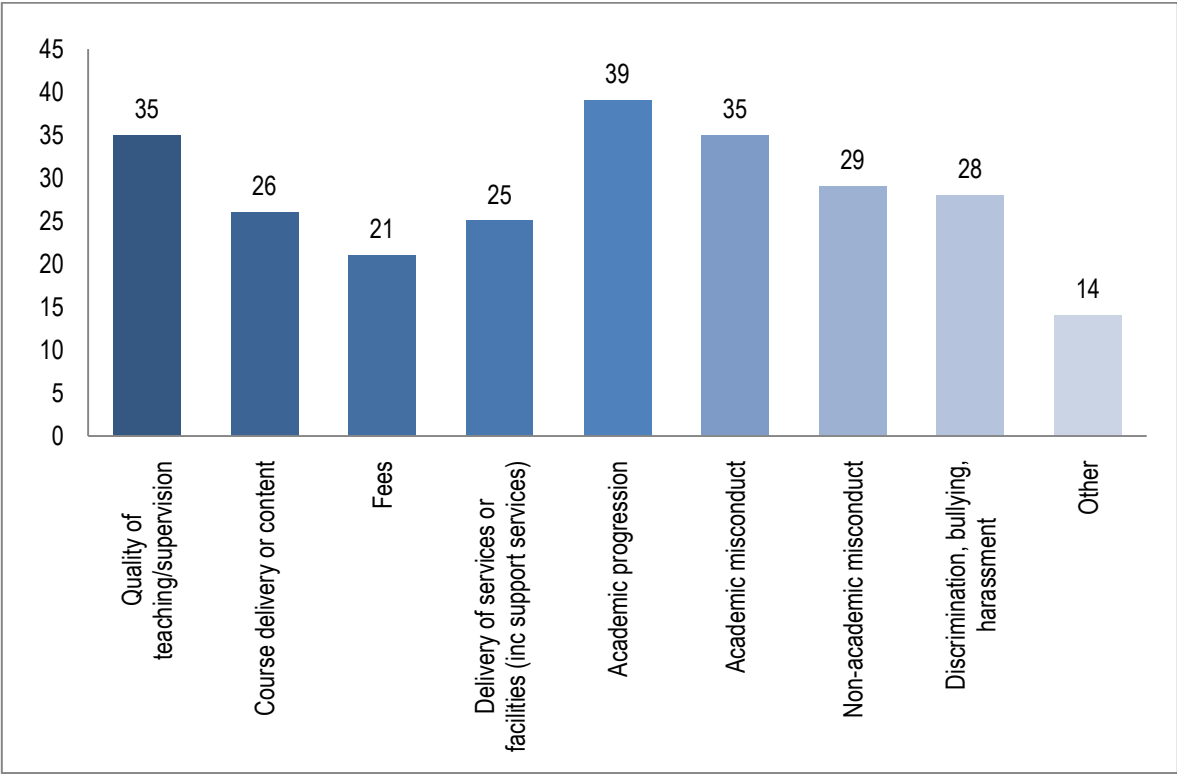
Nearly all interviewees interviewed held roles in which they dealt routinely with student support and disciplinary matters. Some held roles in an executive capacity as members on discipline committees, complaints panels, academic boards or as part of a university governance unit. A number of them were university lawyers.

Most interviewees interviewed were highly experienced with student complaints and disciplinary matters with nearly 65% of them having held their position for three to five years or longer.

8.3.2 **Types of complaints**

Interviewees were asked to identify the types of complaints they routinely deal with in their current roles. The responses are largely reflective of the results in the staff survey and again, they could nominate more than one type of complaint. Other complaints indicated as typical included special consideration, campus accommodation and credit transfer.

Table 33: Ch 8.2 - Staff Interviews - Types of Complaints



While Table 33 suggests that institutions deal with a wide range of complaints, there are two qualifications to this: first, the types of complaints are aligned to the particular role of the interviewee, and second, reflect the stage of the complaint process. For instance, disputes about fees are routinely dealt with by grievance officers, ombudsmen or deans of students (87.5%) and are less common for heads of schools (67%) or in-house lawyers (33%). The fact that in some cases, fees disputes are dealt with at those levels is probably more indicative of the stage that the dispute has reached in the overall process. It would be unusual for heads of schools and university lawyers to handle fees disputes at first instance.

The results however bring to the fore that certain types of complaints are shared amongst a variety of roles, whether directly or indirectly, which may have implications on handling and management processes.

8.3.3 Multi-faceted complaints

We asked interviewees whether complaints falling into more than one category were dealt with under one process, or under separate processes. The overwhelming majority (about 80%) said that complaints falling under more than one category are dealt with under separate processes. One interviewee commented that where the initial allegation of misconduct is followed by a complaint by the same student, the resolution of that complaint does not impinge on the misconduct outcome. In such cases, the interviewee said it became necessary to “unpack the issues” to deal with the various components. However, another interviewee suggested that a more holistic approach was needed to identifying underlying problems, such as medical conditions or behavioural issues.

In response to our question whether particular complaints may “fall between the cracks” because they overlap areas involving different processes, about 35% agreed. Some commented that multi-faceted complaints can also be more prone to procedural errors. Particular problem areas identified included:

- incorrect advice given by staff over the proper management of a particular complaint;
- overlooking secondary issues to deal with the primary problem at hand;
- difficulty in interpreting existing rules due to vague definitions;
- uncommon situations not covered by rules; and
- lack of independent review.

8.3.4 Lodgement and recording of complaints

Interviewees indicated that the vast majority of complaints are made by students personally, and only rarely are they directed to the university through a student association (although the student association may be supporting the student), a lawyer, or other person (such as a parent).

The majority of interviewees (around 61%) indicated that complaints were recorded in a centralised system of some kind, although when questioned further, in the majority of cases, that system was in fact specific to the administrative unit handling the particular type of complaint. It was not a university-wide system. The remaining interviewees (particularly academic staff) said they were either unaware of what processes were in place, or else said that complaints were recorded in a fragmented, *ad hoc* manner (usually by means of individual files relating to the particular complaint or appeal).

For those universities that indicated they do record data centrally, the information recorded included types of complaints, total numbers, the faculty or school from which they emanate. They were less likely to record data about the student’s demographic, such as age, ethnicity (for instance, if they are Aboriginal or Torres Strait Islander), or disability, although in some cases, distinctions were made between local, international or study abroad students. They were even less likely to record whether students were undergraduate or postgraduate, or the degree in which they were enrolled. In some cases, outcomes of complaints and appeals were also recorded (for instance, outcomes of student misconduct appeals).

8.3.5 Procedural formality

The above results reveal that a variety of systems for recording complaints have been implemented at many institutions. However, there is a stark discrepancy in the procedural formality in which complaints have to be lodged prior to being investigated. We asked interviewees whether their institutions required complaints or allegations to be made in writing before it will proceed to investigate them.

Approximately half of all interviewees replied that writing was a requirement for complaints to be investigated, while the other half suggested that investigation could proceed without that formality. One respondent commented that informal complaints were not, however, entered into the central recording system. Another

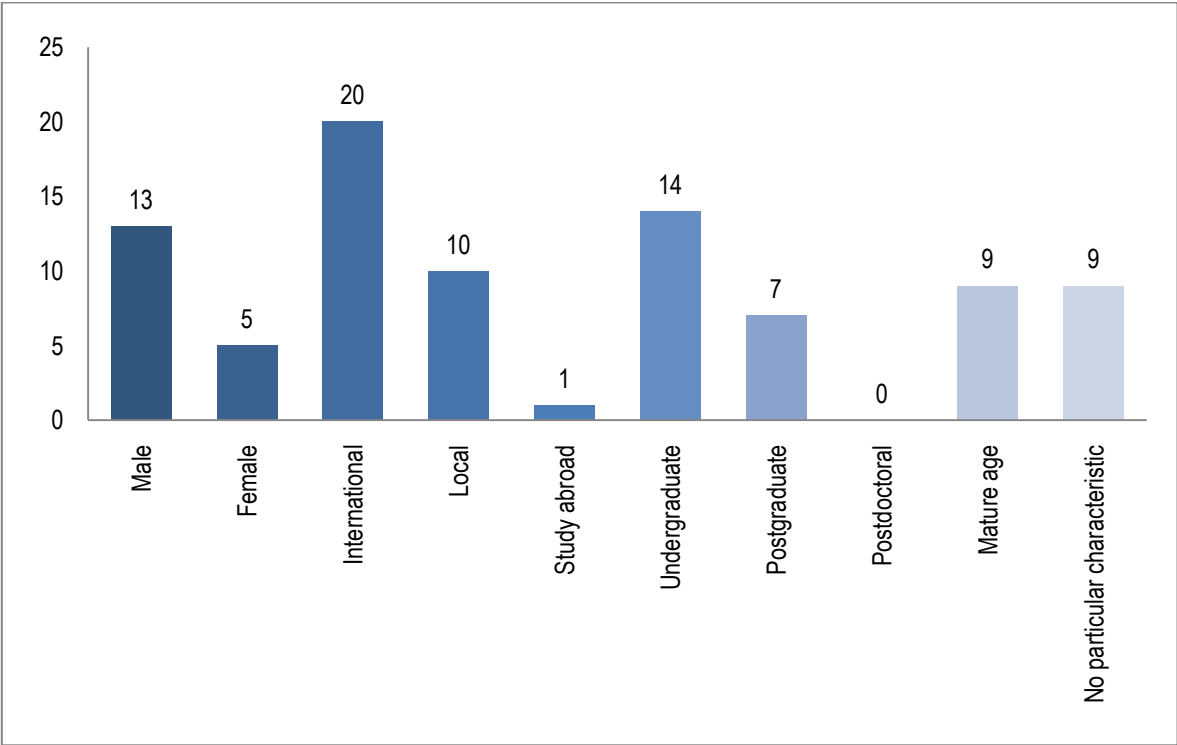
respondent said that a complaint would only “proceed centrally” if a formal, written complaint was lodged outside the faculty.

Interviewees noted that the writing requirement depended on two factors: the nature of the complaint; and the stage of the complaint’s progress.

8.3.6 Complainant profiles

We asked interviewees to identify certain characteristics of complainants based on their experience. The results indicate that complaints were most likely to be made by male, undergraduate, and international students.

Table 34: Ch 8.2 – Staff Interviews – Student Demographic For Complaints



Of particular significance is the disproportionate representation of international students (twenty responses). While undergraduates also represent a high proportion of complainants (fourteen responses), this is not necessarily out of proportion to ratios of undergraduates to postgraduates across the sector (although we have not included a comparative study on this aspect). However, one interviewee did make the observation that the nature of complaints between undergraduates and postgraduates differs in that undergraduates tend more to raise problems about communication with academic staff, while postgraduates are more inclined to raise problems about the processes and procedures themselves.

Some interviewees felt that the probability of a complaint being made rests principally on two scenarios: first that the student has a lack of awareness of, and familiarity with, standards of academic conduct; and second, the student’s prior experiences with the higher education sector, and fluency with existing or expected procedures.

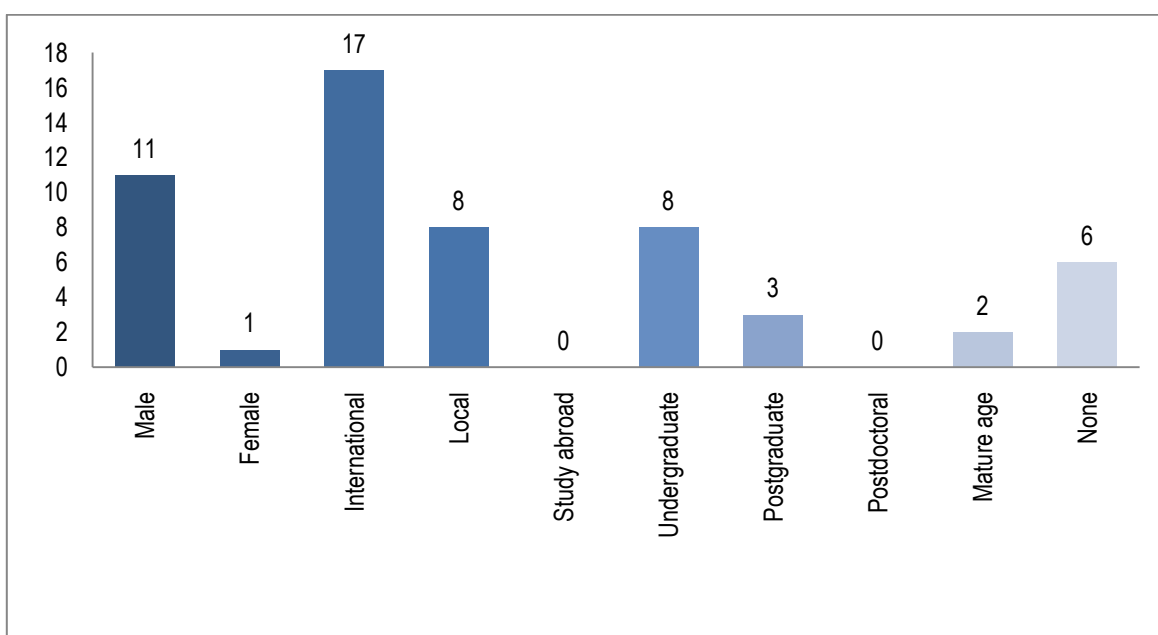
The results demonstrating a high prevalence of complaints by international students fall into line with the results of the staff survey. Our interviews clarified that, for the most part, this was due to cultural and structural pressures that university complaints procedures and processes often fail to acknowledge. Cross-cultural barriers appear to contribute to lack of awareness about academic standards and university processes. For example, one interviewee felt that some cultural groups are more inclined to an attitude of “everything is negotiable” and insist on face-to-face communication to achieve their preferred outcome. Another interviewee said that gaps and misunderstandings contributed to misaligned expectations in relation

to research conduct and to plagiarism in particular. Nearly all interviewees acknowledged that international students are under enormous pressure to complete their degrees within certain timeframes, according to a budget and without room for the possibility of academic failure. They also acknowledged that international students also had the expectations of their families and friends weighing upon them, particularly those who are the first in their family to undertake university studies. Thus, there was a general perception among interviewees that international students had much more at stake, and thus had more reasons to lodge complaints or appeal academic or misconduct decisions adverse to them.

While interviewees indicated that undergraduate complaints were more frequent than those from postgraduates, several later asserted a greater regularity of complaints by more experienced and mature students. Several causes can be attributed to this. On the one hand, it was less likely that undergraduate students, particularly recent high school leavers, would initiate a complaint because of lack of awareness of complaints avenues, or because of fear of retribution by staff. A number of interviewees indicated that, postgraduates, on the other hand, were comparatively more confident and self-assured in using complaint avenues because of their greater experience with the higher education sector. PhD students were viewed as “high achievers” and “solid performers” who had ‘more at stake’ in comparison to undergraduates, but nevertheless were untried in the unstructured nature of the PhD.

We asked interviewees to identify characteristics of complainants that were subject of allegations of misconduct. The results show a strong correlation between the characteristics of complainants in general and those who are subject of misconduct claims.

Table 35: Ch 8.2 – Staff Interviews – Student Demographic For Misconduct



Although we did not specify any type of misconduct in our question, most interviewees associated the term “misconduct” with “academic misconduct”. Examples of the types of academic misconduct dealt with by interviewees included plagiarism, collusion, unauthorised group work and cheating in exams. Again, most interviewees commented on the overrepresentation of international students in relation to these types of misconduct. The causes were believed to be cultural.

8.3.7 Unreasonable and persistent complainants

We endeavoured to assess staff perceptions of the frequency of ‘unreasonable’ complaints and complainants. Although we did not define what ‘unreasonableness’ might entail, interviewees identified unreasonable complainants on the basis of the following features:

- (a) those who, through volume of complaints or requests for assistance, impose an unreasonable burden on the organisation’s resources; or

- (b) those who will not accept the outcome and resolution process of their complaint and demand further resources in the hope of achieving their expectation; or
- (c) those who engage in aggressive, rude or harassing behaviour during the complaints process.

Interviewees for the most part recognised that, in some cases, this type of behaviour can be indicative of other problems, such as mental health, stress in the home environment, and so on.

Although a majority of interviewees (about 70%) said they had experienced unreasonable or unreasonably persistent complainants, they said that the overall proportion of these was minimal – around 2% to 5% in most cases. Within that range, about 70% of complaints were regarded as unreasonable and about 30% were identified as unreasonably persistent. Notwithstanding the very low proportions overall, most interviewees reported that these types of complaints took up a much greater proportion of resources, created unreasonable burdens on the effectiveness of complaints processes and created greater stress levels on staff. A number of interviewees said that while unreasonable or persistent complaints might only form 2% to 5% of complaints overall, they could divert up to 70% of resources that were often already under strain. One interviewee suggested that there was a tendency among this cohort to “forum shop” or to make false claims about the manner in which their complaint was dealt with. In one example related in an interview, a lecturer was accused of not replying to the student’s several emails. This was later found to be untrue.

Most interviewees felt that these issues could be largely overcome through improved strategies, procedures and support. Many felt current strategies and procedures were inadequate and, in some cases, did not provide guidance for staff at all. Many felt that centralisation of informal complaints and misconduct investigations was imperative to get a better, overall picture of the student’s conduct and history. Other strategies suggested were drafting policies and procedures in plain language that both staff and students can understand, and awareness-raising initiatives and education about expectations of academic conduct and values.

Only a few interviewees indicated that their institutions had the capacity to deal with unreasonable and persistent complaints through tailored strategies and procedures. At one institution, for example, a case management procedure was in place that involved all staff consolidating and redefining the key issues surrounding a student’s conduct. If a student’s conduct is considered vexatious, then the university will consider commencing misconduct proceedings. If, on the other hand, there is a genuine need to further assist the student, a single point of contact is created so that the student is limited to communicating only with that designated point of contact.

8.3.8 Perceptions about increases in complaints and why they are made

Nearly 50% of interviewees perceived that numbers of student complaints had increased overall in the last three to five years. Only a very narrow proportion identified a steadiness or decrease in complaints over that period. In most cases, they attributed any decrease to improvements in their institution’s processes. Some who disagreed that complaints had increased said they felt that publicity, rather than hard evidence, was responsible for creating perceptions that complaints were on the increase.

We asked interviewees to identify some circumstances in which they had experience of students being reluctant to make complaints. Two cultural and structural issues stood out:

- (a) fear that complaining will attract retribution and affect academic progress; and
- (b) cultural reluctance to cause a fuss or “make waves”.

A number of interviewees agreed that students often perceived complaints processes as biased and not sufficiently independent. They cited numerous instances where students would raise complaints only after release of final results, for fear of retribution.

While these responses coincide with other responses referred to above about student profiles, and lack of awareness or prior experience, they do reveal something further. In the discussion about complainant profiles, those features were enumerated as cultural and structural causes for *making* a complaint. In this section, the very same features are taken as cultural and structural causes for *preventing* the making of a

complaint. To that extent, these particular features are perceived to work both ways in whether a student decides to pursue a complaint.

The only scenario that was the majority of interviewees identified as no barrier to raising complaints was students feeling that their problem was not important enough to raise – which is contrary to responses we obtained from the student surveys. One might conclude from this that staff identify structural and cultural barriers as the main reasons why students are less inclined to pursue complaints – not because they think their concerns or complaints are too trivial or unimportant to raise in the first place.

Using the same sliding scale as for the survey (see Chapter 8.2.4), we asked interviewees to rate the underlying causes that may have led to the perception that students today are more willing to pursue complaints. A large proportion agreed or strongly agreed with the following propositions:

- (a) that students see themselves as consumers of education services (90.7%);
- (b) that students have higher expectations of universities (86.3%);
- (c) that students have much more at stake and are (therefore) more persistent about pursuing complaints (85.8%).

Of those who agreed or strongly agreed with the first two propositions, academic staff (about 60%) were more inclined to “strongly” agree than general staff (about 35%). The percentage was less for the third proposition, with only 45% of academic staff indicating that they strongly agreed, compared with 37% of general staff. Those who disagreed with all three propositions were academic staff.

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.

Staff were more divided on the issue of staff training in how to manage complaints. A slight majority (57%) attributed inadequacy or lack of staff training, particularly at departmental level, as contributing to more complaints, or escalation of them into formal complaints. However, a still sizeable number (about 31%) did not think staff training was a factor in why a student is inclined to complain.

We asked interviewees to correlate categories of complaints to their respective frequency over a three-year period.

The results show a strong division between *academic* and *non-academic* complaints. *Academic* complaints involving progression and misconduct were rated high in terms of frequency, with many interviewees saying they dealt with twenty to fifty (and in some cases, more than fifty) complaints in the past three years of their experience. The following categories of complaints were most frequently dealt with by interviewees (between ten and more than fifty complaints over the last three years):

- (a) academic progression (including review of marks, exclusions, credit transfer, and so on) (53.9%);
- (b) academic misconduct (plagiarism, cheating, etc) (31.7%);
- (c) delivery of services/ facilities (21.0%);
- (d) course content and delivery (15.0%).

Conversely, and even allowing for the fact that two-thirds of interviewees were academic staff who more typically deal with academic complaints, the numbers of non-academic complaints (for example, disputes about fees, discrimination, harassment or bullying) were exceptionally rare. Nearly 70% of interviewees had either dealt with less than five complaints in those categories over the last three years. The results are particularly interesting when compared with litigated matters, which indicate, on the face of it, that causes of action are framed around non-academic issues (such as unlawful discrimination) rather than academic issues. However, as outlined in Chapter 3, closer analysis reveals that disputes about academic judgment are often the trigger for the complaints, and are re-framed around a particular cause of action for which there is remedy.

The following categories of complaints were least recurrent in the experience of those interviewees who dealt with non-academic complaints: (between 0 and 10 complaints):

- (a) non-academic misconduct (bullying, harassment, etc) (87.5%);
- (b) fees (87.5%);
- (c) discrimination, harassment, bullying (86.8%);
- (d) quality of teaching/ supervision (84.5%).

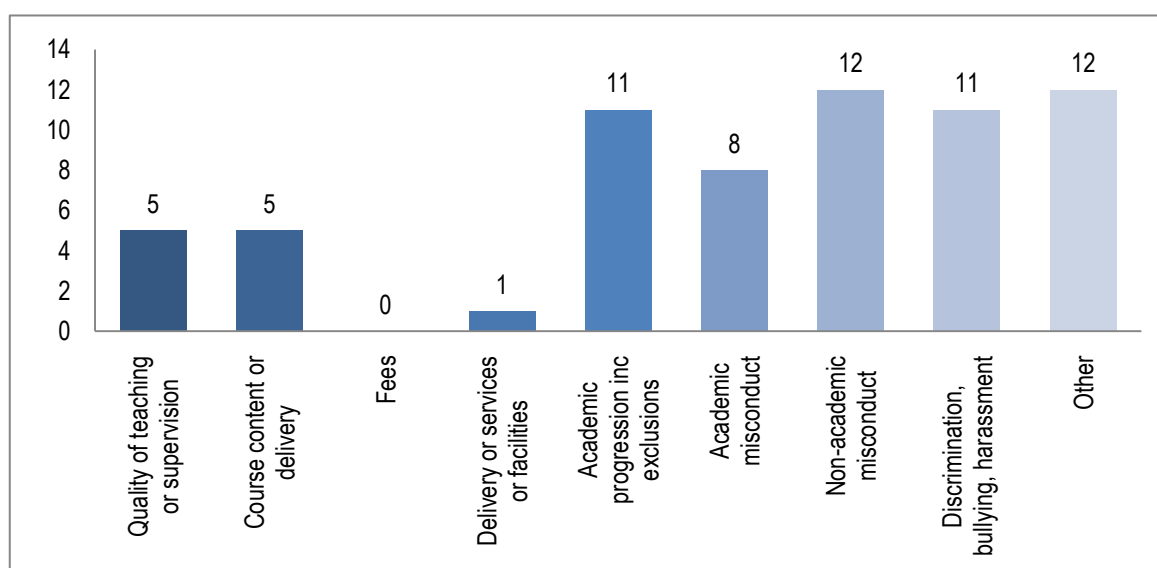
Other categories of complaints not included in the interview questionnaire, but raised by interviewees included issues related to enrolment and admission, eligibility prerequisites for professional development and academic appeals.

8.3.9 Complaints management

Interviewees identified more than 70% of complaints as being managed and resolved using internal processes.

There was general concurrence among interviewees (72.5%) that certain types of complaints would routinely take longer than others. We asked interviewees to identify those types of complaints that, in their experience, took longer to resolve. As expected, the results show that complaints taking longer than others are more qualitative and investigative in nature and often involve a number of issues. These require a greater investment of resources and time, frequently across different levels and departments of the university.

Table 36: Ch 8.3 – Staff Interviews – Complaints That Take Longer To Resolve



The types of complaints categorised as “other” encompassed issues involving appeals, special consideration, disability accommodation, mental health issues, reputational risk and criminal matters. The results for each category in Table 36 should not be interpreted in isolation. It would be overly simplistic to assume that a timeframe for resolution hinges only on the type of complaint. This is particularly so where a complaint raises a number of underlying issues affecting the performance of a student, such as mental health issues or home environment.

A number of interviewees said that those dealing at the “front line” of complaints did not feel empowered to access those staff with the capacity to resolve them. This resulted in delay or non-resolution. Moreover, they said that those staff members who did have capacity to resolve complaints had an attitude of being “too busy” or “unavailable for contact”, and treating complaints resolution as an unwelcome interruption to their normal duties. One interviewee expressed frustration that some staff had developed a lack of interest in resolving

complaints, and suggested that one way of alleviating this problem was to develop of rotating roster of academic staff members with delegation to resolve complaints.

We also investigated the efficiency of internal resolution systems and asked interviewees to indicate timeframes for resolving certain categories of complaints. Data from these interviews suggests that *all* complaints are resolved within six months.

The results correlating categories of complaints to certain timeframes reflect the data regarding time-intensive complaints generally (see Table 3). The complaints categories that tend to take the longest (more than one month and up to six months) include academic misconduct, bullying/ harassment/ discrimination, non-academic misconduct, and academic progression. On the other hand, complaints that tend to be dealt with more expeditiously (less than one month) include fees, facilities/ services delivery, course quality or content, and quality of teaching/ supervision.

Table 37: Ch 8.2 – Staff Interviews – Time Taken to Resolve Complaints

Statement	Less than 1 month	1 to 3 months	3 to 6 months	6-12 months
Course quality or content	12	7	0	1
Fees	11	3	0	0
Delivery of facilities/services	11	4	1	0
Academic progress including exclusions	8	7	2	0
Academic misconduct	3	11	2	0
Non-academic misconduct	6	10	2	0
Bullying, harassment, discrimination	5	10	1	0

Further reinforcing the results that complaints do not routinely take longer than six months to resolve, a majority of interviewees indicated that a resolution period beyond six months was “not applicable” to their experience. For those who did say that some complaints routinely took longer than six months to resolve, we asked what underlying factors may cause this to occur. Most interviewees identified complexity of the case as the prime reason; others nominated involvement of staff as another factor.

8.3.10 Alternative Dispute Resolution (ADR)

We briefly canvassed staff for their views about ADR as a way of resolving complaints. We did this because many universities offer alternative ADR mechanisms (usually in the form of mediation) to resolve complaints. Interviewees were generally optimistic about using ADR, and those whose institutions had those mechanisms in place said that they had been largely successful. Those interviewees whose institutions did not offer ADR believed that this would be worth introducing as part of a complaints resolution process, although some had reservations about whether ADR was appropriate in some circumstances, such as student misconduct and allegations of discrimination, bullying or harassment and should only be used for certain categories of complaints.

8.3.11 Outcomes of complaints not resolving internally

We asked interviewees questions about those complaints that were referred to external bodies for resolution by students, such as state and territory ombudsmen. The results from those interviews indicate that external review is extremely rare. More than 90% of interviewees said that about 90% of complaints they had dealt with were resolved internally. The remaining 10% nominated a figure of between 10% and 30% being dealt with externally. Two interviewees indicated that students sometimes approach an external body, such as an ombudsman or anti-discrimination body, before raising the complaint internally.

Of those complaints dealt with externally, the majority of interviewees indicated than more than 50% are resolved in favour of the university. The remainder (in roughly equal numbers) were either resolved in favour of the student or by settlement.

Responses were mixed about confidence in external review, particularly by state and territory ombudsmen. Two interviewees said they were confident about the fairness of their university's procedures:

"I am happy for students to go the ombudsman. Nearly all cases that have been referred to them have resolved in the university's favour."

and:

"I am 99% in favour of our university telling students to go to the ombudsman with their complaint, and will stop our internal process if that happens."

However, another interviewee commented that state and territory ombudsmen could at times be overly fixated about issues of process, at the expense of equity and fairness of outcomes. A few interviewees commented on the lack of feedback about outcomes from external review of complaints, sometimes because of confidentiality requirements, and sometimes because of lack of information from the external body itself.

8.3.12 Impact of complaints

We asked the fifty-one interviewees if they had experienced or identified any of the following in relation to complaints:

Table 38: Ch 8.2 – Staff Interviews – Impact of Complaints on Institution and Staff (1)

Impact	Yes	No	No response or don't know
Adverse publicity	12	26	13
Processes too complex or confusing	13	28	10
Low staff morale	20	20	11
Insufficient resources to handle complaints properly	13	29	9
Confusion among staff about responsibilities	24	14	13
Staff resignations	4	35	12

The most significant factors identified were confusion among staff about their responsibilities. Of the thirty-eight interviewees who answered this part of the question (or were able to), twenty-four answered "yes". Low staff morale also featured (although equal in numbers of "yes" or "no" answers). Somewhat surprisingly, complexity of or confusion about processes did not factor as significant among interviewees.

That said, and as Table 39 shows, an ineffective complaints process is more likely to impact on personal relationships rather than the university as a whole. Lack of effective processes can lead to low staff morale, and staff and student relationships being damaged irreparably, although a number of interviewees said that low staff morale is more often attributable to inappropriate behaviour by students when they raise grievances, rather than the process itself. External factors, such as adverse publicity or attention from external regulatory bodies were less significant.

An important consequence attributed to ineffective complaints processes was diversion of staff and other resources that could be employed more productively.

Table 39: Ch 8.2 – Staff Interviews – Impact of Complaints on Institution and Staff (2)

Statement	Always	Usually	Sometimes	Rarely	Never
Staff morale and health suffers badly	9.1	27.3	36.4	21.2	6.1
Student/ staff relationship irreparably damaged	12.9	16.1	48.4	19.4	3.2
University suffers bad publicity	0	12.5	28.1	34.4	25.1
University attracts attention from statutory or other regulating authorities (e.g., Ombudsman, DEST)	0	15.2	39.4	24.2	21.2
Other	50.0	0	12.5	0	37.5

We also asked interviewees if they could identify the impact of their institution's complaints processes on students. There was strong consensus that students for the most part continued with their study program, although some felt that a student's experience with the process can at times lead to low morale which in turn results in poor academic performance. Some interviewees also commented that sometimes the effect is circular – that is, that a student can be so distressed with the process, that he or she is less likely to cooperate with the process, resulting in the process not fulfilling the student's expectations, and thus causing further distress to the student.

Another interviewee also claimed that it would be wrong to assume that it is always the complaints process that causes distress. Factors such as a predisposition to mental health and work, family or financial pressures also play a role. This interviewee commented that because complaints processes are not designed with those factors in mind, it was critical for those handling complaints to engage in what that interviewee described as "self-imposed principles of humanising the process".

However, another interviewee felt that a complaints appeals process can also have a positive impact in helping students to take responsibility for "lifelong learning", and that this was particularly so for cases involving plagiarism, where the existence of a disciplinary process served to reinforce those principles.

We also asked those interviewees who acted as in-house lawyers (four in total) whether their universities had an internal policy that required academic or administrative units found to be at fault by a court or a tribunal to pay for legal costs incurred for that litigation. All responded that there was no such policy.

8.3.13 Improvements to processes

Most interviewees (about 82.9%) said their universities had reviewed their complaints and appeals processes in the last three years. Generally, the three main objectives identified were to:

- ensure greater fairness and transparency;
- streamline processes and ascertaining consistency by reducing *ad hoc* and fragmented processes; and
- guarantee accountability by way of allocating and delegating staff responsibilities appropriately.

Examples cited by interviewees as means of achieving those objectives included:

- publishing procedures more widely;
- drafting rules and procedures in clear, simple and plain English;
- involving student counsellors or student associations in the complaints process;
- establishing alternative processes to resolve low-level misconduct;
- ensuring non-adversarial approaches to communication;

- (f) establishing informal resolution processes;
- (g) increasing staff training.

According to interviewees, the outcome of those reviews engendered positive effects on complaints resolution. More than half of all interviewees (53.1%) thought the complaints process, following a review, was more user-friendly to both staff and students. About 38% of interviewees also said processes had become fairer and more transparent and complaints were being resolved at an earlier stage. However, most interviewees (about 75%) indicated that improvements in resourcing and staff training were less likely to be an outcome of a review.

Conversely, changes in complaints handling were rated low in terms of effectiveness by most interviewees. Less than a quarter of interviewees noticed better resourcing or better staff training as outcomes of periodic reviews. The lack of change in this area was further reinforced in comments submitted by staff who noted the deficiency in training in particular.

We also asked interviewees whether they agreed with certain, specified strategic measures to improve deficiencies: that is to say, introduction of mediation to resolve complaints (except appeals), central recording of complaints and a student ombudsman. The responses to these suggestions were strongly favourable: 77.5% agreed that mediation would be useful, 86.3% agreed that universities should centrally record complaints and 75.6% agreed that universities should have a student ombudsman.

In addition to rating measures for improvement, interviewees were asked to evaluate the current complaints mechanisms at their universities. Complaints processes were generally rated highly. They were perceived to be comprehensive (69.8%) and quick and effective (62.8%). However, a significant number (20%) said that their universities processes were too lengthy and complex.

A slight majority (51.2%) disagreed that staff received adequate training. Responses were split across the range of roles of interviewees.

8.3.14 National student ombudsman

Despite strong support for internal student ombudsmen, there was less enthusiasm for a national student ombudsman among staff interviewees. Those who did express support for such a model said it should only be triggered once all internal university processes are exhausted.

Those who supported a national model said its most positive effect might be to force universities to engage in complaints resolution more actively and achieve more consistency across the sector as a whole. Those who did not support a national model expressed the following concerns:

- (a) it would just add another layer to existing external regimes;
- (b) it would undercut and weaken capacity for internal resolution;
- (c) it would allow universities to shift their responsibilities to an external forum;
- (d) it would be unduly expensive and cumbersome to establish (especially if universities are expected to contribute to its funding, as with the UK model);
- (e) it would be punitive rather than preventative in its measures;
- (f) it would be too detached and remote for quick and effective resolution of complaints; and
- (g) it would increase the potential for adverse publicity throughout the sector.

8.4 Recurring themes

The main recurrent themes that emerge from these interviews can be summarised as follows:

- (a) staff perceive that there is a shift in student attitudes in that they view universities as providers of consumer services, and that this is particularly apparent since the introduction of full fee-paying courses. The interviews also reveal that many staff find it difficult to reconcile those attitudes with the historical concept of universities as places of higher learning and scholarship;
- (b) while the most common complaints dealt with by the staff we interviewed involve academic progression or appeals against findings of academic misconduct, the categories do tend to overlap and reveal a lack of a centralised, more holistic approach to managing and resolving more complex complaints;
- (c) staff acknowledge that students are often afraid to make complaints for fear of retribution, or for other cultural or structural reasons;
- (d) staff thought that certain categories of complaints are overrepresented because of students' (in particular, international students') lack of familiarity with standards and expectations of universities. Plagiarism was identified as a particular issue;
- (e) failures in complaints processes were often the result of lack of familiarity of staff about their roles and responsibilities. This was particularly so among academic staff we interviewed. Both academic and general staff agreed that internal reform was needed to improve processes, as well as proper training and guidance for staff;
- (f) while internal university ombudsmen were generally supported, there was little enthusiasm for a national student ombudsman, particularly given the existing regime of state and territory ombudsmen. The general feeling was that more effort should be put into improving internal processes.

9 Chapter 9 – Other interviews

9.1 Purpose

In addition to interviewing those within the university sector, the project team obtained the views of those working outside universities, but involved in dealing with conflicts that arise between universities and students in order to obtain the perspective of those involved with complaints or appeals from students, but who are external to universities.

Given the extremely limited time we had in which to request and conduct interviews with all stakeholder groups, we only received positive responses for interviews from the following:

- (a) the NSW Ombudsman's Office;
- (b) the WA Department of Education Services; and
- (c) a lawyer in private practice who has represented a number of international students in disputes involving universities.

9.2 Interview with representatives from NSW Ombudsman's Office

9.2.1 Introduction

The NSW Ombudsman's Office is established by the *Ombudsman Act 1974* (NSW). Universities in New South Wales come under the jurisdiction of that office by virtue of falling within the description of a "public authority" in section 5 of that Act.

The NSW Ombudsman has taken a good deal of interest in universities over the last decade. As well as investigating individual complaints, that office also takes a pro-active role in assisting universities to improve their complaints handling strategies, for example, by conducting training workshops. That office has also published what they term as *best practice* guidelines in complaint handling (NSW Ombudsman, 2006).

We interviewed two representatives from the NSW Ombudsman's Office.

9.2.2 Categories of common complaints

Using the same categories of complaints for staff interviews (see Table 33), these interviewees indicated that, over the last three to five years, the greatest number of complaints the Office had received related to quality of teaching and supervision, fees and exclusions. They also reported receiving a number of complaints in two categories not specifically listed – these being degree administration (including changes to degree structures) and failure to accommodate disability, mainly in the area of examinations. Of overall complaints, more than ten were made under the ESOS Code in the last year alone. They expressed concern that universities did not always appreciate that different standards should apply for international students in some respects, such as special consideration – where an adverse finding could have more severe consequences than for local students.

9.2.3 Profile of students likely to make complaints or be the subject of misconduct allegations

In their experience, students who were more likely to be complain, or to be the subject of allegations of misconduct were likely to be male, international and undergraduate, although some of the problems related to exclusion had been rectified with the introduction of the ESOS Code in 2007.

Interestingly, they rated (but only as an informal guess) the number of complaints that they designate as falling into the *vexatious* or *unreasonably persistent* category at between 10% and 20% across the Australian sector as a whole. Even as an informal guess this is considerably higher than the rating reported by university staff and student associations (see Chapters 7 and 8). They commented that some state and territory ombudsmen recorded an even higher rate – in some cases up to 25%. However, they qualified this response

by explaining that their threshold for designating particular complaints as vexatious or unreasonably persistent was based on their own particular criteria. In that context, they noted that they were presently working with a number of public agencies, including universities, to assist in dealing with *difficult and unreasonably persistent complainants* through means of guidelines and training workshops (see for example, NSW Ombudsman, *Fact Sheet No 22 – Very Difficult Complainants*, December 2005, at <http://www.nswombudsman.nsw.gov.au/publication/PDF/factsheets/t0IVJLVH.PDF>).

9.2.4 Resort to litigation and other external mechanisms

These interviewees agreed with the perception that student litigation or resort to other external mechanisms has increased in the last three to five years. They agreed with statements that this was so because:

- (a) students have higher expectations of universities;
- (b) students see themselves as consumers of education services;
- (c) students have much more at stake.

They commented that the implications of students not “getting their own way” were greater for a number of reasons: first, it is not easy for students, particularly students enrolled in research degrees, to simply move to another university; second, students have a more consumer-oriented attitude; third, there is more freedom of expression. For international students, they feel that consequences of failure are perhaps more dire, taking into account cultural differences (such as loss of face), higher stakes in job markets in their own countries and, more recently, the global recession.

While acknowledging there have been substantial improvements across the NSW university sector in the way complaints are managed, training of staff in complaint handling remains of some concern; availability, quality and participation (particularly by academic staff) differs markedly across the sector.

9.2.5 Internal resolution processes

When asked to nominate those cases that take longer to resolve, quality of teaching or supervision, course content or delivery (particularly of documentation) and allegations of unlawful discrimination, bullying or harassment featured strongly. Reasons for this included that academic staff did not appear to know how to handle the situation properly (particularly if an issue not commonly complained about), so that it quickly gets escalated. In some cases, particularly discrimination, bullying or harassment allegations against staff, staff faced potentially serious consequences (including disciplinary proceedings) and were more likely to “put up a fight”, which could delay investigations considerably. In general, these interviewees indicated that:

- (a) all universities should have a student ombudsman or similar (although they expressed disapproval of use of “ombudsman” as a descriptor for the role because, in their view, this creates confusion in relation to their own role for students);
- (b) universities should record centrally types of complaints and from where in the university they emanate. They noted that only a couple of NSW universities had implemented university-wide complaints databases over the last few years;
- (c) universities need to better train staff (and particularly academic staff) in complaint handling;
- (d) while university policies and processes tended to be mostly comprehensive and reasonably easy to access and understand, they also tended to be focussed on complaints categories and contain too many stages or categories. In addition, they felt that some universities had too many stages in their processes which only served to unnecessarily prolong complaints;
- (e) they agreed that mediation or other forms of alternative dispute resolution should be available for most categories of complaints, except discrimination, bullying or harassment disputes. In relation to misconduct, they felt that mediation could work in some circumstances, particularly where the relationship between the university and the student was to continue (that is to say, the student was not expelled); and

- (f) perhaps unsurprisingly, they did not favour the establishment of a national student ombudsman, as they felt that this would add nothing (except another layer) to the existing regime of state and territory ombudsmen.

9.2.6 Resolution of complaints

Most complaints investigated were reported as resolving in favour of universities. However, while this may be so, the way in which the university dealt with the complaint internally was often unsatisfactory, resulting in the NSW Ombudsman making section 31AC recommendations about its functions, policies, procedures or practices (see s.31AC of the *Ombudsman Act 1974* (NSW)).

9.3 Interview with representative from WA Department of Education Services

9.3.1 Introduction

The Western Australian State Government, through its Department of Education Services (WADES), is responsible for the registration and accreditation of education providers in Western Australia and has responsibility for the quality of higher education in Western Australia within the national quality framework (see the *Higher Education Act 2004* (WA)). WADES also plays a role in attempting to resolve complaints between international students and providers (including universities) by providing a free mediation and conciliation service through its International Student Conciliator. According to a statement on its website, WADES is available to discuss issues at any time during an internal complaints or appeals process, but does not become actively involved unless and until attempts to resolve the problem through those processes have failed (see http://www.des.wa.gov.au/pages/international_disputes.php).

We interviewed one representative from this office.

9.3.2 Categories of common complaints

Again, using the same categories of complaints as for staff interviews (see Table 33), this interviewee indicated that their office received over 100 complaints in each category in each year, although this response was qualified to the extent that that volume of complaints applied across the education sector as a whole – not just universities. This is because sector-specific statistics are not kept. Accordingly, all responses reported are affected by this qualification unless indicated otherwise.

9.3.3 Profile of students likely to make complaints or be the subject of misconduct allegations

This interviewee reported that the ratio of male to female complainants tends to slightly favour males. The ratio of undergraduates to postgraduates tends to depend on the particular course involved, but there are probably slightly more postgraduate complainants, although this may be attributable to the current overall ratio of postgraduate international students to undergraduate international students in Western Australian universities.

This interviewee reported, in response to the question about what percentage (if any) of complaints were vexatious or unreasonably persistent, that nearly all cases are not unreasonable when they first present, and that students were often distressed. While expectations about outcomes might be misconceived or unrealistic, there was not necessarily a vexatious aspect to the complaint. According to this interviewee, WADES sees its role as trying to educate students and universities to see problems from the other perspective and to look for solutions.

9.3.4 Resort to litigation and other external mechanisms

This interviewee was unable to indicate whether that office had seen a significant increase in complaints in the WA university sector in the last three to five years because of lack of specific data. However, as a general proposition, there was agreement with statements that:

- (a) students have higher expectations of universities;
- (b) students see themselves as consumers of education services;
- (c) students have much more at stake.

In addition, international students no longer seemed to be as deferential as in the past (in particular, students from Asia), and had very effective networks in their home countries, which they could use to “*bad mouth*” particular education providers.

In response to questions about the effectiveness of university processes to resolve complaints quickly and effectively, this interviewee said much depended on the process. This interviewee disagreed with statements that staff are not trained to handle complaints quickly and effectively, but with the qualification that there should be better cross-cultural training made available to staff. This interviewee also commented that there appeared to be high “burn out” rates and stress levels among complaint handlers, and thought this was more attributable to lack of time and resources, rather than lack of training.

This interviewee also commented that there is too much emphasis on marketing, and that it was more important to ensure that what students receive is consistent with what is marketed to them.

9.3.5 Internal resolution processes

Complaints about quality of teaching or supervision were seen as taking the longest to resolve internally for a number of reasons – the type or complexity of case, the number of people involved, who was involved (that is, in the sense that reputations and relationships might be at stake) and gathering and analysing evidence (where an investigation is involved).

In conclusion, this interviewee:

- (a) agreed that universities should have a student ombudsman or similar to handle complaints, although no preference for a particular model was expressed;
- (b) thought that universities could make better use of mediation or other forms of alternative dispute resolution to resolve complaints at an earlier stage (although this interviewee was unsure as to which particular types of complaints might be appropriate in relation to particular types of complaints); and
- (c) saw no value in the establishment of a national student ombudsman. Apart from making the process more cumbersome than it already is (because it would just add an extra layer to existing regimes), this interviewee felt that such a role would have an eastern Australian focus and that issues specific to Western Australia might be overlooked.

9.4 Interview with lawyer

9.4.1 Introduction

We also interviewed a lawyer based in New South Wales whose practice area includes representing international students in complaints or claims against universities.

9.4.2 Categories of common complaints

Using the same categories of complaints as for staff interviews (see Table 33), this interviewee nominated academic progression as the most common type of complaint from client students. The next most common were (in this order) quality of teaching, course content or delivery (in particular, the inability of students to understand lecturers' language and teaching styles) and fees.

Attendance issues were also raised as presenting problems for some international students, although in a university context, this may no longer be an issue following changes to Standard 11 of the ESOS Code, which no longer requires universities to monitor attendance of students, although they must monitor course progress according to their policies and procedures.

9.4.3 Profile of students likely to make complaints or be the subject of misconduct allegations

This Interviewee saw no discernable differences in the profile of international students who presented as clients, in terms of gender and whether undergraduate or postgraduate, and felt that vexatious or unreasonable complaints were extremely rare. Moreover, international students are often worried about their visa or (where granted) permanent residency status and were scared that unsatisfactory academic progress could affect their family's chances of coming to Australia, which in turn places greater pressure on them. Accordingly, these fears contributed to a feeling among international students who felt they had no choice but to complain if problems did not resolve in their favour.

9.4.4 Resort to litigation and other external mechanisms

This interviewee disagreed with the perception that student litigation (at least in New South Wales) had increased in the last three to five years, although they thought it had remained steady. This was because some universities had improved their processes markedly which tended to resolve complaints at a much earlier stage. In particular, regional universities had improved more than Sydney-based universities in this area, possibly because they have to compete harder to attract international students.

9.4.5 Internal resolution processes

This interviewee said the two most common types of cases that took longer to resolve were refunds of fees ("universities don't want to pay") and academic progression ("because universities are not prepared to adjust, and are mainly concerned with issues of pass or failure, rather than the scale of marks, for instance, the difference between a pass mark and a credit mark").

Although, in this interviewee's experience, use of internal complaints or appeals mechanisms tended to resolve complaints about 90% of the time, when students did use external mechanisms (meaning, the NSW Ombudsman's Office, DEEWR, courts and tribunals and offers of settlement), then they tended to resolve mostly in favour of the student. However, this view is not supported by the data for reported litigation (see Chapter 3), or data supplied by the NSW Ombudsman's Office about the complaints they deal with (see Chapter 9.2). Nevertheless, this interviewee did perceive that, in most cases, universities were at fault.

This interviewee agreed with the following statements:

- (a) that all universities should have a student ombudsman or similar (but did not express a preference for any particular model);
- (b) that universities should centrally record types of complaints and where they come from within that university;
- (c) that universities could do more to deal with complaints more effectively at first instance;
- (d) university policies were, for the most part, easy to access and understand, although the interviewee felt that this comment was more applicable to regional, than Sydney-based, universities;
- (e) university staff members do not receive sufficient training in dealing with complaints, particularly at first instance. This interviewee also felt that some universities were a bit too “*quick off the mark*” to notify DEEWR of unsatisfactory course progress, because “*they are too worried about DIMIA*”.⁷ In addition, this interviewee felt that too many university staff were unfamiliar with the requirements of the ESOS Act and ESOS Code, and that training should be compulsory for all staff involved with international students (academic or general);
- (f) that there should be a national student ombudsman to handle complaints and appeals once internal mechanisms are exhausted. This interviewee favoured a model similar to the OIA in the United Kingdom and felt that such a role would only work properly if well resourced, trained and with full statutory powers.

This interviewee was unsure as to whether mediation or other forms of alternative dispute resolution would work well. In all of the cases in which this interviewee had been involved, resolution was achieved through negotiation with the university. Moreover, mediation (especially if conducted by an external, professional mediator) costs time and money to organise. In many cases in which this interviewee had been involved, a cost-effective outcome had been achieved through negotiation.

This interviewee also felt that VSU had had an adverse impact in dealing with complaints, in that the demise or cutbacks in services of many student associations meant that students were unable to obtain a second opinion or have access to advocacy services. This, in this interviewee’s view, may have contributed to the growth in this interviewee’s legal practice area in the last couple of years.

9.5 Recurring themes

The following themes emerged from these interviews although this was only a very small sample:

- (a) that international students have much more at stake and appear more prepared to complain about or appeal decisions, compared with local students;
- (b) the application of some university processes (for example, special consideration applications) equally to local and international students can impact more adversely on international students than for local students in some instances;
- (c) some, but not all, universities have improved their processes and systems, but still have a way to go in designing and implementing systems and processes that will facilitate complaints resolution at an earlier stage;
- (d) proper staff training of both academic and general staff, including in the area of compliance with the ESOS Code, is critical to the success of internal complaints handling regimes.

⁷

This is a reference to the Department of Immigration and Citizenship, formerly the Department of Immigration, Multicultural and Indigenous Affairs.

10 Chapter 10 – Comparisons with the United Kingdom and New Zealand

10.1 Introduction

When reviewing complaint handling regimes within a particular jurisdiction, and suggesting ways of improving them, it is useful to compare them with regimes operating in other jurisdictions. To that end, the project team reviewed those operating within the United Kingdom and New Zealand. We chose these two jurisdictions because they have similar legal systems to Australia, but operate under two very different regimes for handling complaints and appeals pursued beyond internal university processes.

In 2004, the UK Higher Education Office established the Office of Independent Adjudicator (OIA). It is designated as the student complaints scheme operable under that Act, effective from 1 January 2005 (see s.13 *Higher Education Act 2004* (UK)). It effectively replaces the jurisdiction of the visitor which has been abolished (see s.20 *Higher Education Act 2004* (UK)). The visitor traditionally (and in addition to courts and tribunals) exercised a form of external review of university decisions.

The OIA operates as an alternative to courts and tribunals. All universities in England and Wales are subject to this complaints regime. While students are not legally bound to use the OIA regime, and may resort instead to remedies available through courts or tribunals, the recent case of *R (Carnell) v Regent's Park College and Anor* [2008] ELR 268 has made it clear that courts will not entertain applications for judicial review where a suitable, alternative remedy exists [para. 32].

In addition, the UK Quality Assurance Agency has published and disseminated a *Code of Practice for the Assurance of Academic Quality and Standards in Higher Education*.

New Zealand does not have a system comparable to the OIA but, like Australia, it does have an ombudsman who can handle complaints about administrative acts, decisions, omissions or recommendations of universities. In addition, claims can be brought in various courts and tribunals.

10.2 United Kingdom

10.2.1 The higher education landscape

As of August 2008, there were a total of 169 universities and higher education institutions in the United Kingdom (source: Universities UK, <http://www.universitiesuk.ac.uk>). As this suggests, there is a distinction between higher education institutions (which can award degrees) and universities (we shall refer to these collectively as “HEIs” for the purposes of this report). An institution may only be awarded the title of *university* if it meets certain criteria as assessed by the UK Quality Assurance Agency (“QAA”), which acts on behalf of the Privy Council. The Privy Council is the body invested with power to approve the use of the word *university* (source: Universities UK, <http://www.universitiesuk.ac.uk> and *Further and Higher Education Act 1992* (UK)).

Before the introduction of the OIA, the only avenues for review of internal decisions by HEI’s about student complaints were the visitor and/or courts or tribunals. Moreover, the visitorial jurisdiction only applied to some older universities. Decisions of HEIs were and are not reviewable by parliamentary or local government ombudsman in England and Wales (Harris, 2007, p. 575).

10.2.2 The Dearing Report and the establishment of the OIA

In 1997, the Dearing Report, after noting that student complaints were on the increase, recommended that, as a matter of good governance:

“... that, over the next two years, (the Committee of Vice-Chancellors and Principals) review and, if necessary, amend their arrangements for handling complaints from students, to ensure that: they reflect the principles of natural justice; they are transparent and timely; they include procedures for reconciliation and arbitration; they include an independent, external element; and they are managed by a senior member of staff ...”

(Dearing, 1997, para. 15.57 and Recommendation 50)

In addition to improvements in internal mechanisms, the Dearing Report also recommended the establishment of an independent external mechanism, such as an ombudsman, which had found success in other public sector areas of the United Kingdom, such as the UK Healthcare Commission (Dearing, 1997, para. 15.58), (Harris, 2007, p. 571).

10.2.3 The OIA Scheme

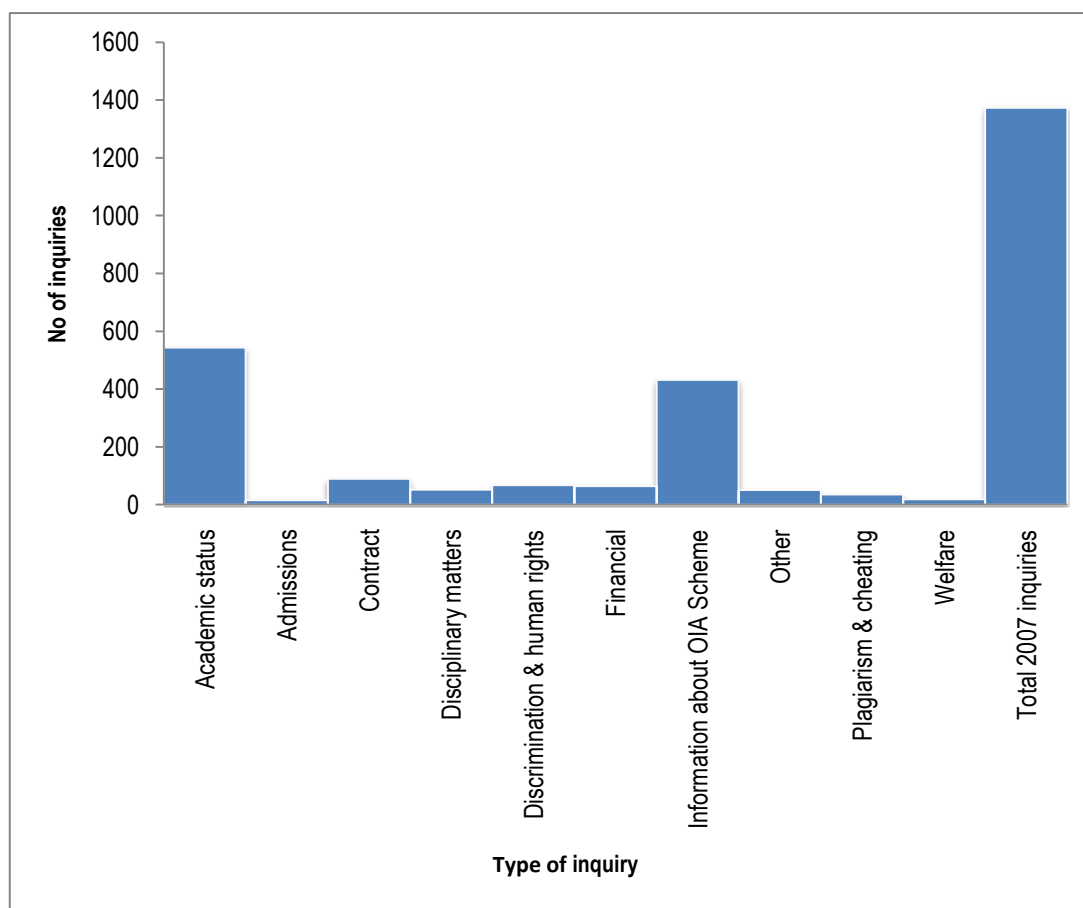
The OIA was established under the *Higher Education Act 2004* (UK) and was designated to deal with complaints by students enrolled in HEIs in England and Wales, effective from 1 January 2005. At the time of writing, 145 HEIs fell within the OIA Scheme (source: www.oiahe.org.uk/hei_list), although decisions of the OIA are not legally binding on them.

The first Independent Adjudicator was Baroness Ruth Deech, who retired in April 2008. She has been succeeded by Robert Behrens. The OIA is a company limited by guarantee, and has a board consisting of independent and nominated directors (Office of Independent Adjudicator, 2007, p. 33). The stated objectives of the OIA are to:

- (a) resolve speedily and fairly those student complaints that cannot be settled by the higher education institution itself, and to do so in a cost effective manner;
- (b) promote a less legalistic approach to dispute resolution in higher education;
- (c) share information about how universities should handle complaints and what constitutes good practice;
- (d) be accessible to both universities and students and to keep them informed about their work on a regular basis;
- (e) treat all complainants and inquirers fairly and with respect, and in a positive spirit of support for good relations between all sectors of higher education;
- (f) promote a good experience of education for all students at universities and to preserve the high academic standards (Office of Independent Adjudicator, 2007, p. 506).

In 2007, the total number of student inquiries totalled 1,374, compared with 897 in 2006 – an increase of over 25% (Office of Independent Adjudicator, 2007, p. 17). Some inquiries were general inquiries about the OIA Scheme and are included in Table 40 (which is reproduced in a different format to that published in the *OIA Annual Report 2007* (Office of Independent Adjudicator, 2007, p. 23)).

Table 40: Ch 10.2 United Kingdom: Categories of Inquiries Dealt With By OIA In 2007



About 75% of complaints received in 2007 were eligible for investigation by the OIA (Deech, 2008, p. 7).

10.2.4 The role and approach of the OIA

The OIA operates according to a set of rules that are published on its website (source: www.oiahe.org.uk/docs/OIA-RulesMay2008.pdf). Importantly, it does not handle complaints about academic judgment, although it does reserve the right to determine what is or is not a decision of academic judgment (Deech, 2008, p. 5). The review procedures of the OIA are broad, and the OIA is not bound by the rules of evidence in conducting its review (see paragraph 6.6 of the OIA Rules). Moreover, the reviewer also has power to seek a settlement acceptable to both parties (without or without a mediator) if considered appropriate (see paragraph 6.8 of the OIA Rules). Although - its rules do not say so explicitly, the approach of the OIA is inquisitorial in nature, rather than adversarial, similar to the approach adopted by Australian ombudsmen. They also have power to recommend a range of remedies to higher education institutes, including, where appropriate, the issue of apologies, payment of monetary compensation, changing the way they handle complaints, changing internal policies or procedures and so on (see paragraph 7.4 of the OIA Rules).

10.2.5 Report of the UK National Union of Students

In March 2009, the UK National Union of Students (NUS) published a report following review of complaints and appeals procedures in HEIs in England and Wales (National Union of Students, 2009). That report noted that, while the OIA was now an “accepted and valued” part of the higher education landscape in the UK, there was considerable anecdotal evidence to suggest considerable differences among HEIs in the way in which complaints were handled (National Union of Students, 2009, p. 7).

Following a review, which included surveys of students and student associations and focus groups of student association officers and HEI staff, the report identified the following as key areas of concern:

- (a) **Awareness of procedures by students.** Their research indicated that the majority of students (about 61%) were only “slightly aware” of complaints and appeals procedures of their HEIs. While, as in Australia, HEIs use their websites and student handbooks to publicise their policies and procedures, these were hard to find, and they were often not told what they could expect from the process and the length of time it would take. The Report recommended that HEIs do more to publicise those procedures, citing the example of one university which emails their students at examination time about their appeals procedures. They also recommended that HEIs adopt model procedures, written in plain English and easily accessible to students (National Union of Students, 2009, p. 11).
- (b) **Informal complaints mechanisms.** According to the report, only about one third of HEIs surveyed offered informal resolution, and then only in relation to complaints – not appeals. Moreover, a large number of respondents reported that all too often, staff at departmental level tend to simply defend the status quo, or are too afraid or do not have power to say “sorry”, which meant that complaints were not dealt with impartially unless and until they escalated to the formal stage (National Union of Students, 2009, p. 17). The other major area of concern was the lack of a specified timeframe for resolving complaints informally (which could differ throughout individual HEIs). The report recommended that greater use of mediation could result in better outcomes for all concerned, except in cases where the relationship had broken down irretrievably (National Union of Students, 2009, p. 11).
- (c) In relation to the formal complaints procedures, the report expressed concern about the following issues:
 - lack of staff training and awareness of procedures. According to the report, only staff at senior level in departments were aware of the various regulations, which could result in staff making mistakes in implementing the procedures, or giving wrong information to students (National Union of Students, 2009, p. 21);
 - non-adherence to time limits and confusion among staff about what time limits applied in particular cases (for example, appeals);
 - too many stages of an appeal process. The report noted that most HEIs surveyed had, on average, three or four stages, although this varied depending on whether it was a complaint or appeal process. This meant that students had to complete all stages of the process before they could take their case to the OIA;
 - student representation at meetings or appeals and paper-based appeals. The approach of HEIs surveyed varied according to the report – from the student association being only allowed to offer moral support, but not represent the student, to being able to act as an advocate. Interestingly, no mention is made in the Report about students being allowed to be represented legally, particularly in serious misconduct matters where expulsion might be the outcome;
 - student relationships with staff. According to the report, about 73% of respondents identified that students were often afraid to complain or appeal; for fear that this would adversely affect their relationship with staff. This was particularly so with postgraduate research students;
 - impartiality of formal processes. In response to a question as to how processes could be made more impartial, respondents suggested more use of independent campus ombudsmen⁸ and ensuring that complaints are not dealt with in the same faculty or department. In addition, HEIs should adopt institution-wide procedures and apply them consistently.

⁸ Although it is interesting to note that the NUS did raise the issue of whether these would be perceived by students as independent and that their role as arbiter or mediator needed to be absolutely clear (National Union of Students, 2009, p. 16).

10.2.6 Observations

It would appear that HEI's in the United Kingdom still have a considerable way to go in implementing effective complaints and appeals mechanisms. There remains a good deal of inconsistency and disparity in procedures throughout the sector and the way in which complaints are recorded and monitored (National Union of Students, 2009). Although student litigation may have declined since the establishment of the OIA, it seems that HEIs are fearful of being sued (Harris, 2007, pp. 599-600).

10.3 New Zealand

10.3.1 The higher education landscape

In New Zealand there are eight public universities, these being the University of Auckland, Auckland University of Technology, the University of Waikato, Massey University, Victoria University of Wellington, Lincoln University, the University of Canterbury and the University of Otago.

In addition, there is Te Wananga O Aotearoa (Wananga) or Maori Tertiary Education Institute, a public institution, which provides “quality education in accordance with kaupapa Maori philosophies, principles and approaches” (see Tertiary Education Commission, *Briefing to the Incoming Minister*, November 2008, p. 29). Wananga is the second largest tertiary institution in New Zealand in terms of student numbers. It has multiple campuses and awards bachelor's degrees in teaching, social work and Iwi Environmental Management.

Universities and Wananga are incorporated as tertiary education institutions under the *Education Act 1989* (NZ) and the *Crown Entities Act 2004* (NZ). The Tertiary Education Commission Te Amorangi Mātauranga Matua (TEC), the New Zealand Qualifications Authority (NZQA) and the New Zealand Vice-Chancellors' Committee all have responsibility for monitoring performance of universities and Wananga (see Parts 13A, 20 and 19 respectively of the *Education Act 1989* (NZ) (as amended)). All providers of education for international students are bound by the Code of Practice implemented under s 238F of the *Education Act 1989* (NZ). The International Education Appeal Authority is responsible for investigating complaints of breaches of the Code. Matters may be referred by that Authority to the International Education Review Panel.

10.3.2 Kingsbury Review, 2006

In 2006, the TEC established a *Strategic Review of Pathways and Staircasing* in relation to tertiary education in New Zealand. The first report, published on 7 September 2006 (Kingsbury, 2006) addressed the area of student complaints and set out the current situation as follows (Kingsbury, 2006, pp. 147-8):

- (a) universities are expected to have “robust procedures to address student complaints on academic matters”;
- (b) if a student has exhausted all internal processes, he or she may complain to an external agency;
- (c) for all students at public universities they may complain to the NZ Ombudsman. The role of that office in the tertiary education sector was reinforced by the provision of additional funding in 2001;
- (d) the Ombudsman does not have power to apply sanctions relating to its recommendations – rather, it is considered that the power of “moral suasion” and the fear of adverse publicity should be sufficient to ensure compliance.⁹

The report recommended that, given concerns raised during the review process, the area of student complaints, as a whole, should be considered in a consultative process with the New Zealand Union of Student Associations and the TEC's Learner's Advisory Committee (Kingsbury, 2006).

⁹ This was not the case with a tertiary provider (not being a university) in 2004 when the NZ Ombudsman was bound to report non-compliance to the NZ Parliament.

10.3.3 Approaches to complaint handling at New Zealand universities

Set out in this Chapter is a summary of how New Zealand universities approach resolution of student grievances and discipline matters generally. It is not designed to be exhaustive, but rather to highlight particular approaches taken in some instances which are of comparative interest to this research.

(1) Accessibility of information relating to university regulations, policies and processes

All New Zealand universities have regulations and policies for academic assessment appeals, and academic and non-academic discipline. These are available for students in their university's calendar, and are generally accessible through their university website portal. In most cases, it was difficult to find the correct links and those to university regulations, policies and procedures were not immediately obvious. Some universities allowed access only through the "student-only" site, requiring a user name and password.

Some universities, for example Lincoln University, refer students to its policies and procedures manual, which are to be found in that university's calendar publication.

As is the case among Australian universities, processes vary in terms of their specificity, definition of terms, provision for matters such as natural justice, persons and committees charged with decision-making, final decision making authority and lines of appeal.

(2) Accessibility of information relating to complaints and grievances - websites and university calendars

Very few universities have clear information relating specifically to complaints and grievances that are readily accessible on their websites or in their university calendars. Most rely on reproducing the regulations, which many students (and perhaps staff) would, for the same reasons expressed in Chapter 5, have difficulty in understanding.

However, one good example of clearly accessible information is that of the University of Waikato, which has a specific Students Complaints Policy set out in the "General Regulations" section of its *2009 Calendar* (source: <http://calendar.waikato.ac.nz/policies/studentcomplaints.htm>), although it must be said that there is an assumption that students (and staff) will know to look in that particular section of the Calendar. The terms, 'complaint' and 'natural justice' are defined, and those definitions explicitly exclude matters normally dealt with under the *Assessment Regulations 2005*, the *Student Discipline Regulations 2008* or the *Sexual Harassment and Harassment Policy*. In addition, they expressly exclude matters of "academic judgment of examiners", although the expression, "*academic judgment*" is not defined.

Importantly, it contains a clear statement of the "Rights and Responsibilities of Parties to a Student Complaint". It also emphasizes the importance of informal resolution and then sets out formal resolution procedures, including rights of appeal. We considered this to be a comparatively good model, although it could have been extended to advise both students and staff on the areas exempted.

(3) Student Associations and Student Advocacy Services

In most cases, the best information was made available to students through the websites of student associations. This perhaps indicates the importance of the university student associations generally in New Zealand in providing students with advice, support and advocacy. In 1998, the New Zealand government required all universities and tertiary institutes to hold a referendum of students by April 1999 on whether to retain compulsory student union membership.

As a result of that referendum, the University of Auckland is now the only university in New Zealand with voluntary membership of its student union. This was seen to have significant impact on the effectiveness of the student union of that University in all matters contributing to student life on the campus, including advice and support for students.

In 2002, the University of Auckland established a Student Life Commission for the purpose of:

“... defining what being a student-centred university means for The University of Auckland and to make recommendations to assist the University to develop a student-centred focus over the next five years.”

(University of Auckland, 2002, p. 5).

Two suggestions from that Commission relevant to this research were to:

- (a) reconfigure the University’s student complaints procedure so that it is easily understood and effective (for example, via a class representative system,¹⁰ suggestions boxes and university committees);
- (b) nominate a student ombudsman responsible for investigating, on request, whether appropriate procedures have been followed in respect of student complaints.

(University of Auckland, 2002, p. 28).

The Auckland University Students Association WAVE Department deals with student welfare, advocacy, voice and education which had a section headed, “What is an academic grievance?”, which gives advice on what is an academic grievance, and informal and formal procedures for approaching it. It points to its student advocacy service as being “employed to assist and advise students with academic problems” (source: www.ausa.auckland.ac.nz).

All New Zealand universities have similar student advocacy services, either fully-funded by their respective student associations, funded jointly by the university and student association, or independently contracted to the university. They are independent of academic staff. They are generally available to provide advice on all matters including academic and other grievances and discipline matters. These bodies may also be involved in lobbying universities for systemic changes. There is a Student Advocacy Services Network of New Zealand.

(4) Ombudsmen/deans of students

The use of the term “ombudsman” for other than that position related to public administration is expressly prohibited by s28A of the *Ombudsman Act 1975* (NZ).¹¹ There are therefore no positions with that name in New Zealand universities. Some specific university faculties have deans of students, with advisory and educative functions similar to those of some Australian university ombudsmen and deans of students, for example the dean of students at the Australian National University. One such example is the dean of students at the University of Auckland, Faculty of Law. In that case, information relating to complaints and grievances is provided for students on the faculty website. Students are asked to discuss their complaint first

¹⁰ A system in which students elect someone from their year to act as their spokesperson about any complaints or issues of concern among that student body at faculty or school level.

¹¹ Section 28A was inserted pursuant to section 3 of the *Ombudsmen Amendment Act 1991* (NSW) by which time there were other industry ombudsmen offices established, for example, Insurance Ombudsman and Banking Ombudsman, so they continue to exist as an exception to general prohibition of that nomenclature.

with the elected class representative who may approach the academic staff member on their behalf. If this does not lead to a successful resolution, then the issue may be raised with the dean of students (source: http://www.law.auckland.ac.nz/uoalaw/for/current_students/your_study/regulations).

(5) University mediators/facilitators/disputes advisers

A number of New Zealand universities have contracts with independent organisations or individuals to provide full time or part time services in these various roles. They do not supplant, but work alongside, university regulations, policies and procedures.

Individuals in these roles are non-academic and, while contracted by the universities concerned, they act independently of them. In some instances (for example at the University of Otago), their function is solely to provide a mediation service and mediate in disputes between staff and students. In other instances, their role is much wider and a model which perhaps could be suitable for Australian universities, for example, the Facilitation and Disputes Advisory Service at Victoria University of Wellington. The terms of reference for that position are:

“The role of Facilitation and Disputes Advisor is to assist in creating an environment in which discord and grievances are at a minimum, but where such discord and academic grievances arise, they are resolved in a constructive manner. The Facilitation and Disputes Advisor also assists with the administration of the Statute on Student Conduct and the Policy on Academic Grievances and co-ordinates preventive activities to promote a respectful and non-threatening environment on University Campuses.”

(source: www.victoria.ac.nz/disputes-advice).¹²

Among the stated key result areas are to:

- (a) provide advice, consultation, training to prevent discord, to assist parties to resolve grievances by informal methods or by mediation;
- (b) provide options for dealing with academic grievances;
- (c) monitor so as to identify and advise on the need for systemic changes.

The person in this role also receives matters of academic and non-academic misconduct, and makes the preliminary decision as to seriousness of the alleged infringement and therefore the correct procedure to be followed. While an independent contractor and not an employee of the university, the role reports to the pro vice-chancellor.

(6) University proctors

The University of Otago, The University of Canterbury, Lincoln University and Massey University each have university proctors¹³ with investigatory functions in the area of student misconduct. While the role of proctor, as provided for in the specific university regulations, varies in terms of the powers of investigation and prosecution, they generally relate solely to non-academic misconduct. In most cases, the position is held by a member of the academic staff who reports to the deputy or pro vice-chancellor.

(7) External avenues of complaint

The Office of the Ombudsmen

As public entities, all New Zealand universities come within the jurisdiction of the NZ Office of the Ombudsman. The view of the Ombudsman is that the internal academic and discipline appeal procedures of

¹² One example is the Risk Assessment and Advisory Committee, which was established in 2005 to provide a 'co-ordinated response to serious and concerning behaviour by students'.

¹³ The term, "proctor" has legal, ecclesiastical and education connotations. In education, it generally refers to a senior university official with responsibility for handling disciplinary matters, supervising exams and, in some cases, handling complaints. In some British universities, such as Oxford University, they act as ombudsmen. This role is in contrast to that of the university visitor, who was not a university official, but who "visited" upon the university to perform ceremonial functions and resolve internal conflicts, including an appellate function (Price & Whalley, 1996, 46-7).

tertiary institutes provide adequate remedies for students. The Ombudsman will only investigate a decision of a university to ensure it has followed its own procedures. It will not involve itself in issues of substance, such as academic judgment. Examples of types of such matters which have been investigated by the Ombudsman are:

- (a) a PhD student's dispute with his supervisor resulting in his having restricted access to the laboratory, which limited considerably his ability to complete his research. The university followed the Ombudsman's suggestions made following the investigation;
- (b) a complaint relating to unfair process in the assessment of a PhD thesis. The complaint was upheld and the university followed the Ombudsman's recommendation for examination of the thesis;
- (c) failure to provide information relating to the lowest marks for entrance to medical school. The information was de-identified and provided;
- (d) exclusion of a student from professional school for poor academic performance. The university had not acted unreasonably but nevertheless a compromise was reached following the Ombudsman's recommendations.

(Littlewood, 2008)

Other external agencies

- (a) Commerce Commission – consumer protection;
- (b) Human Rights Commission and Race Relations Conciliator – discrimination;
- (c) Privacy Commissioner – breach of privacy;
- (d) Court proceedings.

There have been very few court actions taken by students against universities in New Zealand, although anecdotal evidence suggests that there are many more complaints where actions have been threatened or commenced and later settled.

Notable cases are:

- (a) *Norrie v University of Auckland* [1984] 1 NZLR 129 in which the Court of Appeal of New Zealand held that a court has power to judicially review a university's decision to exclude a student. It overturned the decision of the High Court at first instance that the complaint was a domestic matter of the University and was within the exclusive jurisdiction of the Visitor. While the court accepted that the proper jurisdiction to determine the case was that of the Visitor, its role was only supervisory. The matter eventually settled confidentially for an undisclosed sum;
- (b) *Grant, Woolley, Staines & Grant v Victoria University of Wellington* (High Court of New Zealand, unreported, 13 November 1997, Ellis J) which involved claims about the quality of the course, negligent misstatement and breach of contract. The University's application to strike out the claim was declined and the causes of action were affirmed. The court held that the relationship between universities and students is partly statutory and partly contractual, and that there could be public and private causes of action. The case subsequently settled for an undisclosed amount of damages;
- (c) *Lamb v Massey University* (High Court of New Zealand, unreported, 19 October 2004, Wild J) which involved a challenge to the university's decision to exclude the student for insufficient progress. The student sued for negligence, breach of contract, breach of natural justice and breach of consumer protection legislation under the *Fair Trading Act 1987*, *Consumer Guarantees Act 1993* (NZ), and the *New Zealand Bill of Rights Act 1990* (NZ). The student was unsuccessful on all causes of action. The student's subsequent application for leave to appeal to Supreme Court was declined.

11 Chapter 11 – Conclusions and recommendations

11.1 Introduction

Reforms to the Australian higher education sector since the late 1980s have changed students' perceptions and expectations. Some have argued that the relationship of a student to his or her university is now regarded as one of a customer or consumer, rather than a member of that community (Kamvounias, 1999), (Kamvounias & Varnham, 2006a), (Rochford, 2008).

From our research, the concept of a student as a consumer of higher education, or education as a commodity, is not an entirely comfortable fit with the traditional notion of a university as a place of higher learning and scholarship (Thornton, 2004, p. 483). In any case, redressing disputes and grievances is a feature of both the consumerist and community membership frameworks (Harris, 2007, p. 566).

It has to be recognised that the student demographic has changed over the last twenty years. These changes are largely attributable to a succession of government policies, beginning in the 1980s, which promote mass participation in higher education. In addition, the introduction of full fee-paying courses and decreased financial support from government means that many students must now work to support their studies (James, Bexley, Devlin, & Marginson, 2007, p. 13). The result is that students have less time to participate in campus life as it existed previously. Accordingly, it should come as no surprise that their needs and expectations have changed.

Those things said, there are a number of reasons why the “consumer” tag is not a comfortable fit. First, higher learning and scholarship is an activity that requires the student to engage in scholarship in an active and independent way. Accordingly, this requires a high level of commitment on the part of the student. Second, the relationship between a university and a student lasts for much longer than for most commercial transactions. Third, this form of categorisation misses one essential point: the inherent power imbalance that exists between universities (and their academic staff) and students. A recurrent theme throughout our research was that students fear that their academic progress will be compromised if they complain, regardless of whether that fear is well-founded.

The NSW Ombudsman (Barbour, 2002, pp. 143-4) claims:

“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.”

To take another perspective, one interviewee commented that the language surrounding complaints “*is all wrong*” and that rather than treating problems or concerns as risks to be managed, universities should instead “treat them as a resource”.

11.2 Conclusions from review of universities' websites and processes

11.2.1 Many universities do not locate or present information in a way that makes for easy navigation and accessibility for students.

In our view, many universities do not locate or present information in a particularly intuitive way, that makes for easy navigation. In some cases, we had to perform keyword searches across the whole university website. This raises at least two problems. First, it assumes familiarity with university jargon. Students (especially those who are recent school leavers or from non-English speaking backgrounds) are often not familiar with that jargon. Second, this could direct a user to information that is out of date, and has not yet been removed from the website. We found some websites contained pages that were out of date or superseded and not removed or marked as superseded. Our research revealed that inaccurate or out of date information was a significant problem cited by students and student associations.

11.2.2 Universities place too much reliance on their statutes, policies and procedures as a means of conveying important information.

Many of these documents are written in complex legalese, use passive voice and university jargon. Processes (and the documents that describe them) that affect people's rights and obligations often involve high levels of complexity, and need to be written in a particular style when part of a statutory regime. However, it is our view that universities need to think about presenting information in alternative ways that can more readily understood by both students and staff. This could include for instance, more use of flow charts, FAQs and plain English guides.

In addition, we think that universities could improve the drafting of statutes, policies and procedures in a number of ways, including through use of logical design, plain English and active voice.

11.2.3 The language used in many statutes, policies and procedures documents that we reviewed did not explain legal or common university or legal terms.

Examples of this were terms such as “natural justice,” academic merit or “academic judgment”, which were not defined.¹⁴ We also found examples of rules that do not allow students to appeal against matters of “academic merit” – yet the meaning of this term is not explained.

Moreover, we found examples where important parts of a process are not explained in explicit terms. This is particularly problematic, because what is often not stated explicitly may be just as important as that which is. University rules relating to misconduct provide a good illustration. It is a well-known principle of natural justice (or procedural fairness) that decision-makers must act impartially and declare any conflicts of interest as soon as they become aware of them. However, many rules we reviewed did not include this requirement, although it may indeed occur in practice. Explicit inclusion of all elements involved in a process is critical for two reasons: first, students will know what to expect from that process, and second, those staff involved in that process will have a clearer understanding of their role and responsibilities in that process. Again, the use of guidelines, flowcharts and standard forms helps to achieve greater understanding of and consistency in following procedures.

11.2.4 Nearly all universities have different processes for dealing with different types of complaints or appeals and often many stages within these processes.

For instance, a number of universities have two different regimes for academic and non-academic student misconduct. While different types of complaints might have differing levels and stages, and involve differently constituted decision-makers, the rationale for separate investigation and decision-making procedures was often unclear. This can lead to inconsistency in the way the process is managed and conducted and in its outcomes. This is particularly so where complaints or appeals straddle two or more different regimes.

We think that many processes would benefit from a consideration of how many stages are really required. The NSW Ombudsman's office commented during interview about what they felt were an excessive number of stages in some NSW university complaints and appeals processes (see Chapter 9.2). A similar problem also seems to exist with some university processes in the United Kingdom (National Union of Students, 2009, p. 23).

11.2.5 There are some inconsistencies within some rules, or between policies and procedures underpinning them.

This is not only confusing for students and staff, but it may have serious legal ramifications for the institution(s) involved. In one recent case, the court found an inconsistency in the nature of an appeal available to a student under that university's misconduct rules, that is, whether the appeal was available on merits or limited to process (see Chapter 9.2). The result of this was that the university's original decision was

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The NSW Ombudsman has criticised universities for not explaining in their policies how universities reach their decisions including assessment of academic merit (Barbour, 2002, p. 144).

set aside, and the university (and the student) was then presumably faced with the prospect of having to start the process again.

11.2.6 The categorisation by most universities of complaints or grievances as either informal or formal may be problematic.

If students have a complaint, concern or problem, they are in most cases advised to speak with the lecturer or staff member involved to try to resolve it informally. If it is not resolved to the student's satisfaction, the student has the option of escalating it into a formal complaint. That process will usually involve the student completing and lodging a form with the appropriate person (grievance officer, complaints manager, dean of students, student ombudsman, etc.) who then deals with it as a formal complaint. Although it is important that students learn to resolve concerns and problems for themselves as part of their overall learning and life experience, this approach can be difficult for them. Some students find it intimidating to speak to a staff member directly to sort out the problem for various reasons, for instance, if they are recent school leavers or because of cultural reluctance, lack of confidence in their ability to articulate their concerns to their lecturer, or if the concern relates to a perceived attitude or behaviour of the staff member towards that student. Interestingly, staff and student associations identified that that undergraduate students face particular challenges because of their unfamiliarity with "the system" (see Chapters 7 and 8). If the student is unable to resolve the concern informally, his or her only option may be to escalate that concern into a formal complaint. This can have unintended and possibly unnecessarily negative consequences for both the student and staff member. Some universities have addressed this by including provision for designated grievance handlers to become involved at the informal stage and act as a facilitator or "go between". An example of this is the dean of students at The Australian National University (Oakes, 2008). We think this approach has merit and warrants consideration by all universities.

11.3 Conclusions from student surveys and interviews with students and student associations

11.3.1 Introduction

This study was not conducted on the basis of a random selection of students and staff across the sample universities. Thus, participants had some experience of university complaints or appeals processes, and had something to say about them. Many students told us they were prompted to participate in this study because of negative experiences they had encountered.

11.3.2 Many students do not know where, how or with whom to raise problems and they have difficulty in accessing information.

This was particularly the case with recent school leavers and international students, and it was notwithstanding that most universities do have some information on their websites. Moreover, they are not necessarily happy about having to access all information through the university's website. Some simply want to speak to someone about their problem in person or by telephone. As the NSW Ombudsman has pointed out:

It is fundamental to the effective operation of any complaint handling system that there is widespread if not universal knowledge of the system and ready access to comprehensive information about and a description of its processes.

(Barbour, 2002, p. B-2).

11.3.3 Students are frustrated at the complexity of processes and the length of time involved in resolving their complaints.

They complain that they are given wrong information about to whom they should speak, and also complain about the lack of availability of staff. This in turn can unnecessarily escalate relatively minor concerns that can be resolved easily and without fuss.

11.3.4 There is widespread concern among students that university staff are not prepared to listen objectively to their concerns and make genuine efforts to resolve them.

In particular, students perceive that academic staff too often simply “stick up for one another” and behave in a defensive fashion when concerns are raised. Student ombudsmen are perceived by many as simply being part of the system and not necessarily able to identify with students’ concerns.

11.3.5 Students who raise a complaint or concern quite often experience a sense of futility when they do so.

In extreme cases, this feeling can result in physical, emotional or financial stress. Although the data shows that the majority of students ultimately continue with their studies and finish their degrees, they nevertheless experience overall feelings of distress, discontentment and even anger. This can have serious implications for long-term relationships between universities (and their staff) and students. For those students who move to another course or university, or simply drop out of the system altogether, this can produce negative attitudes to university education more generally. Those attritions do not sit comfortably with the Commonwealth Government’s objective that by 2025, 40% of those aged twenty-five to thirty-four will have a bachelor level or above qualification (see Hon J Gillard MP, *Speech to Universities Australia Conference*, 4 March 2009).

11.3.6 Responses from international students suggest that they experience difficulties in their relationships with university staff.

There is a perception in the media and, we would suggest, among many university staff and international students, that universities often treat international students as “cash cows” (see for instance C. Nyland, “Don’t treat them like cash cows”, *Herald Sun*, 16 June 2008, and C. Ziguras, “Time to stop milking the cash cow”, *The Age*, 22 October 2007). One interviewee suggested that all students should, as part of their orientation, be given information about whom to see, where to go and what to do if something goes academically wrong during the course of study. While prevention strategies are to be encouraged, these also need to be underpinned by early detection strategies, as well as effective internal procedures. It was evident from both the surveys and interviews that inadequate complaints processes can at times seriously escalate what may first seem a relatively low-level problem.

11.3.7 In relation to issues of plagiarism, there was a sense from those interviewed that students are often unclear about what is expected of them.

Plagiarism and unacceptable levels of collaboration with group work were identified as sources of considerable confusion among international students and recent school leavers. This is despite the fact that universities throughout Australia have responded in a variety of ways, including through introduction of policies and guidelines, as well as detection software systems. Some commentators have argued that this is attributable, to some degree, to the pressures that students face, as well opportunities that occur through advances in technology. Moreover, there is a need to discern between what occurs out of genuine ignorance or confusion and deliberate intent (James, McInnis, & Devlin, 2002, p. 5).

11.3.8 Additional commentary from interviews with student associations

Although VSU was not a specific theme in our interviews with student associations, it nevertheless emerged as a concern for them. This may be alleviated to some extent by proposed changes to the *Higher Education Support Act* and the introduction of new guidelines and protocols for independent advocacy services for students.¹⁵ Student associations claim that lack of funding has significantly limited the ability of many, if not most, of them to provide advocacy and other welfare services for students. Although universities have tried to address this problem, for example by providing advocacy services through internal mechanisms of their own (where the student associations no longer exist) or through direct funding of these services to student associations, concerns were raised about independence. However, some of the longer-established student

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The Commonwealth Government has announced the introduction of the *Student Services, Amenities, Representation and Advocacy Guidelines* which is proposed to be a legislative instrument made under the *Higher Education Support Act 2003* (Cth).

associations said they felt less concerned by universities being seen to “control the purse strings” because they already had an established and strong track record of providing independent advocacy services.

While there was some support for campus ombudsmen as one mechanism to resolve complaints, there were reservations about their independence and impartiality, particularly where ombudsmen were current members of staff. Instead, staff training and awareness and mediation were seen as more effective methods of resolving complaints earlier. Our sense was that while student associations are often very critical of the way universities deal with complaints (or fail to do so), they are nevertheless keen to work cooperatively with them to improve systems and achieve positive change. There was also acknowledgement of chronic shortages of resources available to universities to improve their performance in these areas.

11.4 Conclusions from staff surveys and interviews

11.4.1 Staff perceive that students more readily and persistently challenge decisions about assessment in a higher education environment

Many feel that this puts pressure on universities to adopt a more consumerist attitude to teaching and learning. While staff acknowledge the need for transparency and accountability, they are concerned about academic integrity and standards being undermined. Moreover, some academic staff felt that some students (particularly those categorised by some as “Gen Y” – a generalisation not shared by the authors) have expectations of achieving high marks but “without putting in the hard yards” needed for high academic achievement. Another academic commented that “students these days expect universities to fit around their lifestyle” and “don’t seem to understand that university studies are about independent learning”. This is consistent with the views of some commentators that Australian universities, like those in the United States, are experiencing a “culture of entitlement” among students for high academic results because they are “getting higher grades for doing less” (McInnes, 2001, p. 6). Although vexatious complaints are relatively rare, both academic and general staff expressed concern about unreasonable behaviour of students while pursuing complaints.

This was particularly so where factors such as mental health issues or external pressures come into play. In particular, staff said they felt vulnerable due to lack of clear guidelines and strategies for dealing with students in these situations. In our view, failure to have clear strategies in place to support staff faced with unreasonable behaviour leads to an undermining of decision-making. One effect of this is to create unrealistic expectations on the part of the student. In more extreme cases, and if allowed to escalate, an unhealthy working environment can result for both staff and other students, with potential occupational health and safety consequences.

11.4.2 Lack of training also stands out as a significant area of concern.

Our research reveals that academic staff are more likely not to have received training in complaint handling compared with general staff, although it is unclear whether this is due to lack of availability of training or unwillingness on the part of staff to attend training (or both). At least one general staff member complained that some academic staff in their university considered training and any involvement in complaints, as “beneath” them or falling outside their role as academics. While those comments may be true of some academic staff, we certainly did not get this impression from those we interviewed, all of whom (particularly at faculty and school level) seemed genuinely concerned and interested in finding ways to identify and resolve student problems earlier. It is, however, clear from our research that lack of staff training is an important issue that needs to be addressed by universities as part of an overall strategy to improve their processes.

11.5 Conclusions from external interviews

We concluded that the view from “the outside looking in” is not particularly favourable. This is notwithstanding acknowledgement from the NSW Ombudsman that universities in that state have improved their processes in recent years. Even though it remains inconclusive whether litigation by students against universities is on the increase (see Chapter 5), it does appear that complaints overall, particularly from international students, are on the increase for some of the reasons expressed above. What particularly stands out from those interviews, and from interviews with students and student associations, is not whether a university may ultimately be right or wrong in the decision-making process, but the quality of, and adherence to the process, the understanding by staff of their role and responsibilities, and treatment of the student and his or her complaint throughout that process.

11.5.1 Commentary on support for idea of national student ombudsman

It was not an intention or outcome of this project to make any recommendations about whether there should be established a national student ombudsman. However, because this issue has been canvassed in Australia for a number of years, and given the establishment of the OIA in the United Kingdom, we thought it would be interesting to canvass the idea among university staff, student associations and external interviewees.

A national student ombudsman to resolve disputes involving both staff and students was proposed by the Senate Committee on Higher Education in 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.”

(Senate Committee, 2001, p. 136).

While this attracted initial support (Astor, 2005, p. 71), we found little enthusiasm for it among university staff, and some student associations for a number of reasons. Primarily, it was seen as merely adding yet another layer to an already complex web of internal processes and external forums that exist throughout Australia. Moreover, it would not necessarily address the core issue that problems raised by students should be dealt with earlier and fairly. Many thought it would be better if universities focused their resources on improving internal systems and more use of alternative dispute resolution methods.

Those who did find the idea attractive did so because they felt a national student ombudsman would be completely independent of universities and would be better able to identify and address systemic problems, as well as individual disputes. Some, however, expressed reservations that it might end up a “toothless tiger” if not funded and resourced properly.

While we do not express support one way or another for such a role, we make the following points:

- (a) we agree that it should have capacity to resolve both student and staff conflicts, because student concerns are often triggered by disagreements with staff and, in some cases, those disagreements can escalate into a disagreement between the staff member concerned and the university;
- (b) there already exist layers of external review at both state or territory and Commonwealth levels, which raises the question of whether a national university ombudsman would merely add another layer, or whether it would have some degree of exclusive jurisdiction. There may be some constitutional limitations to establishing a national student ombudsman with exclusive jurisdiction, but an analysis of this issue is not within the scope of this project.

11.6 Key recommendations

Our recommendations are based on our conclusions above.

11.6.1 Recommendation 1 – Suggested strategies for minimising complaints

We **recommend** that universities should follow set criteria that address best practice in their processes and protocols. In particular, they should pay attention to the following:

- (a) admission criteria and application of assessment processes should be sufficiently robust to enable a realistic assessment of a student's ability to complete course requirements to an appropriate standard. Those criteria and processes should be applied in a way that ensures compliance and consistency;
- (b) students who are "at risk" academically should be identified and managed at an appropriately early stage. There should be mechanisms in place for a collaborative holistic approach that includes all staff involved in a student's academic progress or well-being, including, course lecturers, convenors and university counsellors ;
- (c) universities should design clear and user-friendly documentation that sets out in clear terms their expectations of student conduct and performance. Plagiarism policies, in particular, should be described carefully and publicised to all students;
- (d) universities should implement student orientation programs aimed at providing information about the university's expectations of them in relation to academic conduct and performance throughout their studies;
- (e) universities should implement strategies to ensure that students receive accurate and up to date information about all aspects of their courses and assessment;
- (f) universities should ensure that policies with respect to special consideration, credit transfer and granting credit are applied consistently and fairly. However, while it is important that policies are applied consistently to both international and local students, caution is required to ensure international students are not penalised unfairly, particularly in relation to special consideration and academic progress rules;
- (g) universities should ensure that students have access to accurate and up to date advice in respect of any questions or concerns they wish to raise about what is expected of them in relation to their academic conduct or performance.

11.6.2 Recommendation 2 – Publicising information about complaints and appeals

In relation to how universities convey information to their students (particularly via their website) about raising problems, concerns, complaints or appeals, we recommend as follows:

- (a) universities should ensure that web pages used to convey information to students and staff are easy and intuitive to find and navigate. Suggested strategies include hyperlinks, FAQs, flow charts and other images to convey information in a way that can be readily understood, particularly by those whose first language is not English;
- (b) names and contact details of key staff should be included in web pages, so that students know whom to contact about a problem or concern. If there is a student association that provides advocacy services for students, those contact details should also be included;
- (c) there should be hyperlinks to other external sources of information or assistance, , including, where applicable, state or territory ombudsmen and anti-discrimination bodies;
- (d) web pages should be reviewed regularly to ensure information is up to date and accurate. Superseded pages should be removed or marked appropriately to avoid inadvertent reliance on them through use of keyword searches;

- (e) universities should utilise other means to publicise complaints and appeals processes, in addition to online handbooks and use of websites. We recommend that information also be available at faculty counters in student centres. We also recommend that information be included as part of student orientation.

11.6.3 Recommendation 3 - Complaints and appeals processes

In relation to the complaints and appeals processes, and the way in which they are documented, we make the following recommendations:

- (a) universities should state explicitly in information made available to students that raising concerns or making complaints, wherever appropriate, is perfectly acceptable and that the university encourages students to speak to staff as soon as possible about their problem. Moreover, it should be stated explicitly that students need not fear retribution for raising concerns or making complaints, provided they are not vexatious or made maliciously. There should also be a clear statement about how students are expected to conduct themselves towards staff when they make a complaint or raise a concern;
- (b) a description of a complaints process should also include what the student can expect from it, particularly with respect to time frames and outcomes. Managing expectations can be difficult and, if not handled well, can lead to unrealistic expectations and, in more extreme cases, unreasonable behaviour. It can also trigger other complaints;
- (c) statutes, rules and policies should be drafted in clear, plain English formats and use active, rather than passive, voice. It is important that staff involved in a process have a clear understanding of their role and responsibilities. Where a document describes a process, that process should be described in a step-by-step format and all aspects of that process should be included. For example, information about identifying and managing conflicts of interest should be included – it should not be assumed that this is implied into the process;
- (d) where university or legal jargon or terms (for example, “academic merit” or “natural justice”) are used, then their meaning should be explained clearly and precisely;
- (e) existing processes for all types of complaints should be reviewed to limit stages of complaints and appeals to no more than two or three. Investigation and decision-making functions should be explained in clear and consistent terms, regardless of the type of complaint or appeal, and should comply with minimum standards of natural justice;
- (f) the conduct of investigations and any decision-making functions should be undertaken only by properly trained and qualified people (whether they are university staff or external agents or consultants retained for this purpose), who can bring an objective and independent mind to the task (and be seen to do so);
- (g) universities should explore greater use of mediation or other forms of ADR as a tool for resolving complaints in appropriate cases. If available, then universities need to explain in clear terms when it is available, how it works and what can be expected from that process. Moreover, there should be consistency of access. Mediators and facilitators should be appropriately qualified and trained and, importantly, independent (and be seen to be independent);

11.6.4 Recommendation 4 - Record-keeping

While some universities have moved to centralised systems of recording complaints and appeals, this is not widespread throughout the sector. We believe that centralised record keeping is critical to identifying and rectifying systemic failures and other issues, such as behaviour patterns or types of complaints by reference to student demographic or faculty or school demographic.

Accordingly we recommend as follows:

- (a) universities should implement centralised record-keeping systems to record key data about complaints and appeals, once they escalate to or beyond a particular point (obviously it is simply not feasible to record every single complaint or problem raised with a student);
- (b) the following information should be recorded, but subject to any issues about privacy, security, accessibility under freedom of information laws, and defamation laws:
 - the course in which the student is enrolled;
 - the faculty, school or department in which the student is enrolled;
 - whether the student is local or international;
 - the student's gender;
 - whether the student has a disability and, if so, whether that disability has been registered with the university;
 - the various stages of the complaints processes reached;
 - if appropriate, whether the complaint has been referred to an external body;
 - the outcome of the complaint;
 - in relation to misconduct, the system should also record the allegation(s) made against the student, the finding(s) and any penalty imposed.

11.6.5 Recommendation 5 - Guidance and training for staff

Our data reveal that staff, particularly academic staff, are often unclear about their role and responsibilities when students raise complaints or appeals. Moreover, they feel that they do not get enough support or training. Accordingly, we recommend as follows:

- (a) universities should make clear to all staff their expectations about their role and responsibilities when students raise complaints or concerns. A culture where complaints or concerns are regarded as acceptable and to be expected should be promoted and encouraged.
- (b) universities should ensure that all staff, and academic staff in particular, receive and are required to attend training at reasonably regular intervals appropriate to their role in dealing with complaints or appeals. Training should be underpinned by the provision of written guidelines and other information. Training and information should also provide guidance for staff to deal with difficult behaviour;
- (c) availability of academic staff to discuss questions or concerns about assessment was cited as one factor that frustrates students and is particularly problematic for courses taught by casual academic staff. Universities should implement arrangements in all faculties, schools and departments to ensure that academic staff are available to discuss with students any questions or concerns about their course or assessment. We believe this may also be useful to identify academically "at risk" students earlier.

11.6.6 Recommendation 6 - Student ombudsmen

For those universities that have established student ombudsmen or other internal regimes to investigate complaints, our research reveals a perception among students and student associations that in some cases there is a lack of independence. We are of the view however that the student ombudsmen can play a valuable part in the resolution of student grievances. Accordingly, we recommend as follows:

- (a) universities should take steps to ensure that student ombudsman can act in a manner that is "frank, fearless and independent", and be seen to be so. This may involve clearer documentation about the role and ensuring that the person who fulfils the role is not, and is not seen to be, placed in a position of conflict of interest;
- (b) a person appointed as a student ombudsman to conduct independent investigations should also be appropriately qualified and trained to investigate and handle complaints;

- (c) universities should measure the success of the student ombudsman system not only by reference to annual reports from that office, but also through feedback from other sources such as students and student associations.

11.7 Good practice guide

An important aim of this project was to suggest practical outcomes that would benefit both universities and students. With this in mind, we resolved to develop a good practice guide aimed at making present systems more accountable, transparent, and user-friendly. The *Good Practice Guide for Handling Complaints and Appeals in Australian Universities* is published as a separate book to this report.

While undertaking the project, the project team were impressed with the work of a number of universities in developing guidelines for staff, but we believe that further efforts are required and we hope that the *Good Practice Guide* goes some way to achieving that.

A number of other good resources already exist (for example, guidelines published by the Offices of the NSW and Victorian Ombudsmen and the UK Quality Assurance Agency), and we have included in those guidelines appropriate references and web links to those for the assistance of readers.

11.8 Possible areas for further research

We identified the following additional areas that we believe would benefit from further research.

11.8.1 Student ombudsmen

The first area relates to the student ombudsman model used by about one-third of Australian universities. The most common model adopted is that of the traditional student ombudsman who becomes involved in disputes as a last resort, and investigates complaints independently. However, other models do exist, such as a dean of students model, as used at the Australian National University, in which the dean of students acts as a “go-between” at any stage of a complaint, regardless of whether a formal complaint has already been lodged by the student. There are other variations on the theme adopted in universities overseas. In light of concerns expressed about the independence of university ombudsmen and support for more internal resources rather than a national student ombudsman, we think this is an area that would benefit from further research.

11.8.2 Standard model of complaints and appeals processes

The second area relates to implementing and benchmarking appropriate minimum standards for complaints and appeals processes: or to put it another way, is it possible to have a single, standardised model of a complaints or appeals processes across Australian universities? We suspect the answer could be “yes”, but further research is required to investigate the various models and to investigate the receptiveness of students, staff, student associations and other stakeholders to them.

11.8.3 A national student ombudsman

The third area relates to the idea of a national university ombudsman. In our conclusions, we did not express support one way or another, but our research does reveal that feelings about such a role are mixed. The main concerns expressed are that it will add yet another layer to the plethora of forums that already exist, both at Commonwealth and state or territory level. However, it seems to us that this would benefit from further research as to any constitutional limitations that may exist, given Australia’s status as a federation.

11.8.4 Issues relating to clinical and field placements

The fourth area relates to clinical and field placements, which form an important part of a student’s learning experience and assessment in a number of professional disciplines, including teaching and various health disciplines. Two students we interviewed (one of whom was an international student) complained about not having clinical placements available at the appropriate stage of their course, which they said affected their

course progress. Although this is obviously only a tiny sample of our data, we think the issue is one that should be investigated in more detail to ascertain how widespread the problem is and, if so, how it can be addressed. The consequences for international students are particularly dire.

11.8.5 Attrition levels following complaints or appeals

The fifth area relates to attrition rates attributable to students' experiences of complaints or appeals. Although our data reveals that the majority of students continue with, and ultimately complete, their studies, a sizeable minority change courses, move to another university or leave university altogether. Much of the research into attrition rates focuses on teaching and learning issues, as well as students' backgrounds. Moreover, much of it has also focussed on the undergraduate experience (McMillan, 2005:4). We think this area would benefit from further research from the perspective of the teaching and learning experience, including students' expectations of students at all levels.

12 Chapter 12 – Other project outcomes

12.1 National conference

One planned outcome of this project was to host a major conference on the handling of student grievances and discipline in Australian universities. Its purpose was to bring together representatives from various interest groups within and outside the university sector to present their perspectives about complaint handling in universities and to provide a forum for the project team to present some preliminary findings.

The conference was held as part the Southern Cross University Annual Law Summer School in Byron Bay on 4-5 December 2008. Sixty-five delegates attended and included representatives from universities in Australian and New Zealand, law firms in Sydney and Brisbane, and the NSW Ombudsman's Office. The keynote speaker for the conference was Baroness Ruth Deech, DBE who retired in 2008 as the first Independent Adjudicator for the UK Office of Higher Education. Her address focussed on the work of the OIA in its first four years of reviewing complaints in the UK university sector. The authors also gave a presentation of some of their key preliminary findings based on their research so far, as well as further details about project outcomes.

Presentations were also given by:

- (a) Professor Penny Oakes, Dean of Students, Australian National University;
- (b) Ms Nancy Hennessy SM, Deputy President, NSW Administrative Decisions Tribunal;
- (c) Ms Elizabeth Humphrys, Senior Investigation Officer, Office of NSW Ombudsman;
- (d) Dr Jeanette Baird, Audit Director, Australian Universities Quality Agency;
- (e) Professor Peter Healy, Chair of Academic Board, Griffith University;
- (f) Ms Kate Barnsley, Deputy President, Council of Australian Postgraduate Associations;
- (g) Professor Hilary Astor, Faculty of Law, The University of Sydney;
- (h) Mr John Hartigan, General Counsel, University of Technology, Sydney and President, Society of University Lawyers.

The conference received attention from the media and there were two articles printed in the *Australian Higher Education Supplement* on 10 December 2008. Some of the presentations from that conference are available on the project website.

12.2 Project website

Another planned outcome of this project was the establishment of a website to provide a central resource for the university sector and other interested parties (such as Universities Australia and DEEWR). It was also to be used as a means of promoting the project and the conference more generally

Initially, the project team planned for website to be hosted by (as it then was) Carrick Exchange, however, the requirement for visitors to obtain a login and password was not feasible for the short term. The website was, in the interim, hosted by Southern Cross University's School of Law & Justice. A Student Grievances & Discipline Matters Project webpage has now been established as part of ALTC Exchange (see <http://www.altcexchange.edu.au/group/student-grievances-discipline-matters-project>), on which there will be available:

- (a) a copy of this Report and the best practice guidelines;
- (b) details about the conference and copies of presentations from that conference;
- (c) links to relevant Australian and overseas websites for relevant policies, procedures and guidelines; and
- (d) a list of relevant literature.

References

- Aalberts, R., & Evans, R. (1995). "The International Education Experience: Managing the Legal Risks". *Journal of Legal Studies Education* , 13, 29-44.
- Aronson, M. (2007). "Private Bodies, Public Power and Soft Law in the High Court". *Federal Law Review* , 35, 1.
- Astor, H. (2005). "Improving Dispute Resolution in Australian Universities: Options for the Future". *Journal of Higher Education Policy & Management* , 27 (1), 49-65.
- Astor, H. (2008). "Australian universities in court: Causes, costs and consequences of increasing litigation". *Australian Dispute Resolution Journal* , 19, 156-169.
- AUQA. (2003a). *Report (No 9) of an Audit of the University of Newcastle*. Melbourne: Australian Universities Quality Agency.
- AUQA. (2003b). *Report (No 13) of an Audit of the University of Canberra*. Melbourne: Australian Universities Quality Agency.
- AUQA. (2003c). *Report (No 14) of an Audit of Macquarie University*. Melbourne: Australian Universities Quality Agency.
- AUQA. (2003d). *Report (No 16) of an Audit of Southern Cross University*. Melbourne: Australian Universities Quality Agency.
- AUQA. (2003e). *Report (No 19) of an Audit of RMIT University*. Melbourne: Australian Universities Quality Agency.
- AUQA. (2004a). *Report (No 21) of an Audit of Griffith University*. Melbourne: Australian Universities Quality Agency.
- AUQA. (2004b). *Report (No 22) of an Audit of the University of Western Australia*. Melbourne: Australian Universities Quality Agency.
- AUQA. (2004c). *Report (No 23) of an Audit of the University of New England*. Melbourne: Australian Universities Quality Agency.
- AUQA. (2004d). *Report (No 24) of an Audit of the University of South Australia*. Melbourne: Australian Universities Quality Agency.
- AUQA. (2005a). *Report (No 32) of an Audit of La Trobe University*. Melbourne: Australian Universities Quality Agency.
- AUQA. (2005b). *Report (No 33) of an Audit of Queensland University of Technology*. Melbourne: Australian Universities Quality Agency.
- AUQA. (2006a). *Report (No 45) of an Audit of the University of Technology, Sydney*. Melbourne: Australian Universities Quality Agency.
- AUQA. (2006b). *Report (No 47) of an Audit of Flinders University of South Australia*. Melbourne: Australian Universities Quality Agency.
- AUQA. (2007). *Report (No 51) of an Audit of the University of Western Sydney*. Melbourne: Australian Universities Quality Agency.
- AUQA. (2008). *Report (No 59) of an Audit of the University of Newcastle*. Melbourne: Australian Universities Quality Agency.

- Baldwin, G. (1994). "The Student as Customer: The Discourse of 'Quality' in Higher Education". *Journal of Tertiary Education Administration* , 16 (1), 125.
- Barbour, B. (2002). "Handling Student Grievances: What Lessons are there for Institutions in the Cases Brought before the Ombudsman in Australia?". In *Responding to Student Expectations* (pp. 141-149). Paris, France: OECD Publications.
- Bell, M., Bush, D., Nicholson, P., O'Brien, D., & Tran, T. (2002). *Universities Online: A survey of Online Education and Services in Australia*. Canberra: Higher Education Group.
- Bessant, J. (2004). "Legal Issues in Higher Education and the Trade Practices Act". *Journal of Higher Education Policy and Management* , 26 (2), 251-263.
- Birtwistle, T. (1998). "Student Academic Appeals: A Holistic Assessment". *Education and the Law* , 10 (1), 41-54.
- Birtwistle, T., & Askew, M. (1999). "The Teaching and Higher Education Act 1998 - Impact on the Student Contract". *Education and the Law* (11), 89-105.
- Blackmur, D. (2008). Quis Custodiet Ipsos Custodes? The Review of the Australian Universities Quality Agency. *Quality in Higher Education* , 14 (3), 249-264.
- Bradley, D., Noonan, P., Nugent, H., & Scales, W. (2008). *Review of Australian Higher Education – Final Report*. Department of Education, Employment & Workplace Relations. Canberra: Commonwealth of Australia.
- Cassimatis, A. (2006). "Statutory Judicial Review and the Requirements of a Statutory Effect on Rights or Obligations: 'Decisions Under an Enactment'". *Australian Journal of Administrative Law* , 13, 169-185.
- Clarke, P. (2003). "University Marketing and the Law: Applying the Trade Practices Act to Universities' Marketing and Promotional Activities". *Deakin Law Review* , 8, 304.
- Considine, D. (1994). "The Loose Cannon Syndrome: University as Business and Students as Consumers". *Australian Universities' Review* , 37, 36-40.
- Corbin, L., & Carter, J. (21007). "Is Plagiarism Indicative of Prospective Legal Practice?". *Legal Education Review* , 17 (1-2), 53-66.
- Cumming, J. (2007). "where Courts and Academe Converge: Findings of Fact or Academic Judgment". *Australia and New Zealand Journal of Law and Education* , 12 (1), 97-108.
- Davenport, D. (1985). "The Catalog in the Courtroom: From Shield to Sword?". *Journal of College and University Law*, 12 (2), 201-226.
- Davies, M. (2004). "Challenges to 'Academic Immunity' - the Beginning of a New Era?". *Education and the Law* , 16, 75-96.
- Davies, M. (1996). "Universities, Academics and Professional Negligence". *Professional Negligence* , 12 (4), 102-116.
- Davis, M. (2001). "Students, Academic Institutions and Contracts - A Ticking Time Bomb?". *Education and the Law* , 13 (1), 9-28.
- Dearing, S. R. (1997). *Report of the National Committee of Inquiry in to Higher Education*.
- Deech, R. (2008). "Adjudicating Student Complaints". *It's Academic: A National Student Ombudsman for Australian Universities?: Managing Student Grievances & Discipline in the University of the 21st Century*, 4-5 December 2008, (pp. 1-15). Byron Bay, NSW, Australia.

- Destin Shann, T. (1980). "Educational Negligence: A Student's Cause of Action for Incompetent Academic Instruction". *North Carolina Review* , 58, 561-597.
- Dickinson, G. (2006). "University President Can Be Sued as Public Office Holder: Is the Sky Falling In Academe?". *Education Law Journal* , 16 (1), 113-121.
- Dickson, E. (2007). "Disability Standards for Education and Reasonable Adjustment in the Tertiary Education Sector". *Australia and New Zealand Journal of Law and Education* , 12 (2), 25-41.
- Dodd, V. (1984-5). "The Non-Contractual Nature of the Student-University Contractual Relationship". *University of Kansas Law Review* , 33, 701-731.
- Dutile, F. (1996). "Law, Governance and Academic and Disciplinary Decisions in Australian Universities: An American Perspective". *Arizona Journal of International and Comparative Law* , 13 (1), 69.
- Farrington, D. (1998a). "Student Complaints in Higher Education", *Contemporary Issues in Law* 3 (3) 195. *Contemporary Issues in law* , 13 (3), 195.
- Farrington, D. (1998b). *The Law of Higher Education* (2 ed.). UK: Butterworths.
- Farrington, D., & Palfreyman, D. (2006). *The Law of Higher Education*. London: Oxford University Press.
- Fels, A. (1998). "The Impact of Competition Policy and Law on Higher Education in Australia". *Australian Competition and Consumer Commission Journal* , 18, 7-14.
- Field, R., & Barnes, M. (2003). "University Ombuds: Issues for Fair and Equitable Complaints Resolution". *Australasian Dispute Resolution journal* , 14 (3), 198-210.
- Fleming, H. (1997). "Decision-making by University Administrators: Accountability versus Efficiency in the 1990's". *Journal of Higher Education Policy and Management* , 19 (2), 141.
- Ford, D., & Strobe, J. (1996). "Judicial Responses to Adverse Academic Decisions Affecting Postsecondary Students Since 'Horowitz' and 'Ewing'". *Education Law Reporter* , 110, 517.
- Funston, R. (1981). "Educational Malpractice: A Cause of Action in Search of a Theory". *San Diego Law Review* , 18, 743-812.
- Furay, S. (1970). "Legal Relationship between the Student and the Private College or University". *San Diego Law Review* , 7 (2), 244.
- Gangemi, M. (2005). "Griffith University v Tang: Review of a University Decisions Made 'Under an Enactment'". *Sydney Law Review* , 27, 567.
- Gilbert, A. (2003). "Response from the University of Melbourne" - Article by M. Ogawa "University Grievance Handling for Overseas Students: ESOS Act and the National Code" (2003) 10 *Australian Journal of Administrative Law* 162. *Australian Journal of Administrative Law* , 11, 44.
- Greenwold, J. (2000). "Lawyers in the Classroom: The New Law of Educational Negligence". *Education and the Law*, 12 (4), 245-257.
- Griggs, L. (2004). "Tertiary Education, the Market and Liability 'in trade or commerce'". *Competition and Consumer Law Journal* , 12 (1), 64-82.
- Hal, D. (1996). "How useful is the concept of Total Quality Management to the University of the '90's?". *Journal of Further and Higher Education* , 20 (2), 20.
- Harris, N. (2007). "Resolution of Student Complaints in Higher Education Institutions". *Legal Studies* , 27 (4), 566.

- Hopkins, A. (1996). "Liability for Careless Teaching: Should Australians Follow the Americans or the British?". *Journal of Educational Administration* , 34 (4), 39-59.
- Hoye, W., & Palfreyman, D. (2004). "Plato v Socrates: the devolving relationship between higher education institutions and their students". *Education and the Law* , 16 (2-3), 97-113.
- Jackson, J. (2002). "The marketing of university courses under sections 52 and 53 of the Trade Practices Act 1974". *Southern Cross University Law Review* , 6, 106-132.
- Jackson, J. (2006). "Regulation of International Education: Australia and New Zealand". *Australia and New Zealand Journal of Law and Education* , 11 (1), 67.
- Jackson, J., & Varnham, S. (2007). *Law for Educators: School and University Law in Australia*. Sydney, Australia: LexisNexis Butterworths.
- James, R., Bexley, E., Devlin, M., & Marginson, S. (2007). *Australian University Student Finances 2006: Final Report of a National Survey of Students in Public Universities*. Canberra, ACT: Universities Australia.
- James, R., McInnis, C., & Devlin, M. (2002). *Assessing Learning in Australian Universities*. Canberra, ACT: Centre for the Study of Higher Education.
- Jones, G. (2006). "I wish to register a complaint: the growing complaints culture in higher education. *Perspectives* , 10 (3), 69-73.
- Kamvounias, P. (1999). "Students as Customers and Higher Education as Industry: A Review of the Literature and the Legal Implications". *Academy of Educational Leadership Journal* , 3 (1), 30.
- Kamvounias, P., & Varnham, S. (2005). "Doctoral Dreams Destroyed: Does Griffith University v Tang Spell the end of judicial review of Australian university decisions?". *Australia and New Zealand Journal of Law and Education* , 10 (1), 5-22.
- Kamvounias, P., & Varnham, S. (2006a). "Getting what they paid for: consumer rights of students in higher education". *Griffith Law Review* , 15 (2), 306-332.
- Kamvounias, P., & Varnham, S. (2006b). "In-house or in court? Legal challenges to university decisions". *Education and the Law* , 18 (1), 1-17.
- Kaye, T. (1999). "Academic Judgment, the University Visitor and the Human Rights Act 1998". *Education and the Law* , 11 (3), 165.
- Kaye, T., Bickel, T., & Birtwistle, T. (2006). "Criticising the image of the student as consumer: examining legal trends and administrative responses in the US and UK". *Education and the Law* , 18 (2-3), 85-129.
- Keane, P. (2008). "Judicial Review: The Courts and the Academy". *Australian Law Journal* , 82, 623.
- Khan, A. (1996). "Educational Malpractice in Britain". *Journal of Law and Education* , 25 (2), 271-279.
- Kiernan, F. (1995). "Comprehending Legal Documents". *Explain: Newsletter of Centre for Plain Legal Language* (3), 3-4.
- Kingsbury, N. (2006). *Report of the Tertiary Education Commission Strategic Review of Pathways and Staircasing*. Tertiary Education Commission. Wellington: Tertiary Education Commission Te Amorangi Mātauranga Mātua.
- Kos, J., & McVeagh, R. (1999). "The View from the Bottom of the Cliff: Enforcement of Legal Rights Between Student and University". *Australia and New Zealand Journal of Law and Education* , 4 (2), 18-37.
- LeClercq, T. (1999). "Failure to Teach: Due Process and Law School Plagiarism". *Journal of Legal Education* , 49 (2), 236-255.

- Lewis, C. (193). "The Legal Nature of a University and the Student-University Relationship". *Ottawa Law Review* , 15, 249-273.
- Lincoln, Y., & Guba, E. (1985). *Naturalistic Inquiry*. Newbury Park, California, USA: Sage Publications Inc.
- Lindsay, B. (2007). "Complexity and Ambiguity in University Law: Negotiating the Legal Terrain of Student Challenges to University Decisions". *Australia and New Zealand Journal of Law and Education* , 12 (2), 7.
- Lindsay, B. (2005). "Student Subjectivity and the Law". *Deakin Law Review* , 10 (2), 628-638.
- Lindsay, B. (2008). "University Hearings: Student Discipline Rules and Fair Procedures". *Australian Journal of Administrative Law* , 15, 146.
- Littlewood, C. (2008). "The Role of the Ombudsmen in Education in New Zealand". *Annual Conference of the Australia and New Zealand Education law Association - 8 to 10 October 2008*. Christchurch, New Zealand.
- Matthews, T. (1980). "The Office of the University Visitor". *University of Queensland Law Journal* , 11 (2), 152-159.
- McCabe, B. (1995). "Revisiting Concrete Constructions". *Trade Practices Law Journal* , 3, 161-176.
- McGarvie, R. (1990). "The courts and the Universities". *Australian Universities' Review* , 33, 51-2.
- McInnes, C. (2001). Signs of Disengagement? The Changing Undergraduate Experience in Australian Universities. Melbourne. The Centre for the Study of Higher Education, University of Melbourne.
- McLaughlin, S. (1983). "The University Visitor". *Legal Services Bulletin* , 140.
- McMahon, K. (2001). "Universities and Market Discourse". *Monash University Law Review* , 27 (1), 105-163.
- McMillan, J. (2005). Course Change and Attrition from Higher Education (Research Report 39). In C. f. Australian, *Longitudinal Surveys of Australian Youth*. Canberra, Australia: Australian Council for Institutional Research.
- Middlemiss, S. (2000). "Legal Liability of Universities for Students". *Education and the Law* , 12 (2), 69-91.
- Morris, C. (2005). "A 'Mean Hard Place'? Law Students Tell It As It Is". *Victoria University of Wellington Law Review* , 36 (2), 197-228.
- National Union of Students. (2009). *Review of Institutional Complaints and Appeals Procedures in England and Wales*. London: NUS, UK.
- Nelson, D. (2004). "Judicial Review in the Community of Scholars: A Short History of Kulchyski v Trent University". *Education and Law Journal* , 13, 367.
- Nerad, M., & Miller, D. (1996). Increasing student retention in graduate and professional programs". *New Directions for Institutional Research: Assessing Graduate and Professional Education* , 92, 61-67.
- NSW Ombudsman. (2006). *Complaint Handling at Universities: Best Practice Guidelines*. Sydney, NSW: NSW Ombudsman.
- NSW Ombudsman. (2007). *NSW FOI Manual*. Sydney: Department of Premier & Cabinet & NSW Ombudsman.
- Oakes, P. (4-5 December 2008). Someone to Turn To: Working Towards a Warm-Blooded University. *It's Academic: A National Student Ombudsman for Australian Universities?: Managing Student Grievances & Discipline in the University of the 21st Century*, 4-5 December 2008, (pp. 1-15). Byron Bay, New South Wales.
- Office of Independent Adjudicator. (2007). *Annual Report*. London: Office of Independent Adjudicator.

- Ogawa, M. (2003). "University Grievance Handling for Overseas Students: ESOS Act and the National Code". *Australian Journal of Administrative Law* , 10, 162.
- Olliffe, B., & Stuhmcke, A. (2007). "A National University Grievance Handler? Transporting the UK Office of the Independent Adjudicator for Higher Education (OIA) to Australia". *Journal of Higher Education and Policy Management* , 29 (2), 203-215.
- Ombudsman Victoria. (2005). *Review of Complaint Handling in Victorian Universities*. Melbourne: Ombudsman Victoria.
- Ombudsman Victoria. (2007). *Good Practice Guide: Ombudsman Victoria's Guide to Complaint Handling for Victorian Public Sector Agencies*. Melbourne: Ombudsman Victoria.
- Onsman, A. (2008). "Temporing Universities' Marketing Rhetoric; A strategic protection against litigation or an admission of failure?". *Journal of Higher Education Policy & Management* , 30 (1), 77-85.
- Palfreyman, D. (2003a). "Ignorance of the Law is No Excuse!". *Perspectives* , 7 (4), 114-7.
- Palfreyman, D. (2003b). "Phelps ... Clark ... and now Rycotewood? Disappointment Damages for Breach of the Contract to Educate". *Education and the Law* , 15 (4), 237-247.
- Palfreyman, D. (2004). "The HEI-student legal relationship, with special reference to the USA experience". *Education and the Law* , 11 (1), 5-23.
- Palfreyman, D. (2006). "£400K for Educational Malpractice by University Academics". *Education and the Law* , 18, 217-220.
- Pedley, J., & Goldblatt, V. (2007). "The Development of a Student Contract and Improvement in Student Disciplinary Procedures at Massey University". *Australia and New Zealand Journal of Law and Education* , 12 (1), 73-83.
- Philips, A. (2004). "Some Legal Aspects of the Student as a Consumer". *Perspectives* , 8 (2), 41-45.
- Price, D., & Whalley, P. (1996). "The University Visitor and University Governance". *Journal of Higher Education Policy and Management* , 18 (1), 45-57.
- Ramsay, I. (1988). "Educational Negligence and the Legislation of Education". *University of New South Wales Law Journal* , 11, 184-219.
- Reddy, M. (2004). "The Office of the Independent Adjudicator for Higher Education: Preparing for the Statutory Scheme". *Education Law Journal* , 1.
- Robinson, S. (1994). "The Office of Visitor of an Eleemosynary Corporation: Some Ancient and Modern Principles". *University of Queensland Law Journal* , 18 (1), 106-111.
- Rochford, F. (1998). "The Relationship between the Student and the University". *Australia and New Zealand Journal of Law and Education* , 3 (1), 28-48.
- Rochford, F. (2001a). "Suing the Alma Mater: What Loss Has Been Suffered?". *Education and the Law* , 13 (4), 319-333.
- Rochford, F. (2001b). "Traders of the Lost Ark - Lectures and Liability". *Education and the Law* , 13 (2), 127-140.
- Rochford, F. (2003). "Academic Freedom As Insubordination: The Legalisation of the Academy". *Education and the Law* , 15 (4), 249-262.
- Rochford, F. (2005). "Claims Against a University: The Role of Administrative Review in Australia and the United Kingdom". *Education and the Law* , 17, 23-41.

- Rochford, F. (2008). "The Contested Product of a University Education". *Journal of Higher Education Policy & Management* , 30 (1), 41-51.
- Rorke, F. (1996). "The Application of the Consumer Protection Provisions of the Trade Practices Act 1974 (Cth) to Universities". *Queensland University of Technology Law Journal* , 12, 176-200.
- Sadler, R. (1981). "The University Visitor: Visitation Precedent and Procedure in Australia". *University of Tasmania Law Review* , 7, 2.
- Schweitzer, T. (1992). "Academic Challenge Cases: Should Judicial Review Extend to Academic Evaluations of Students?". *The American University Law Review* , 41, 26.
- Senate Committee. (2001). *Universities in Crisis: Report into the capacity of public universities to meet Australia's higher education needs*. Canberra: Commonwealth of Australia.
- Stewart, D. (2005). "Griffith University v Tang, 'Under An Enactment' and Limiting Access to Judicial Review". *Federal Law Review* , 33, 525-553.
- Stuhmcke, A. (2001). "Grievance handling in Australian universities: the case of the university ombudsman and the dean of students". *Journal of Higher Education* , 23 (2), 181.
- Symes, C., & Hopkins, S. (1994). "Universities Inc: Caveat Emptor". *Australian Universities' Review* , 37 (2), 47-51.
- The Quality Assurance Agency for Higher Education. (2007). *Code of Practice for the Assurance of Academic Quality and Standards in Higher Education*. London, UK: The Quality Assurance Agency for Higher Education.
- Thornton, M. (2001). "Among the Ruins: Law in the Neo-Liberal Academy". *Windsor Year Book of Access to Justice* , 20, 3.
- Thornton, M. (2004). The Idea of the University and the Contemporary Legal Academy. *Sydney Law Review* , 26, 481-502.
- Tinto, V. (1993). *Leaving College: Rethinking the Causes and Cures of Student Attrition*. Chicago, USA: University of Chicago Press.
- Turner, R. (1995). "Total Quality Management in the College Classroom". *Quality Progress* , 105.
- University of Auckland. (2002). *Report of the Student Life Commission*. Auckland: University of Auckland.
- Varnham, S. (2001a). "Decisions of academic judgment and discipline in New Zealand tertiary institutes: do cheats prosper?". *Education and the Law* , 13 (4), 389.
- Varnham, S. (2001b). "Guarantees for degrees?". *New Zealand Law Journal* , 418.
- Varnham, S. (1998). "Liability in Higher Education in New Zealand: Cases for Courses?". *Australian and New Zealand Journal of Law and Education* , 3 (1), 3-18.
- Varnham, S. (2001c). "Straight talking, straight teaching: are New Zealand tertiary institutes potentially liable to their students under consumer protection legislation?". *Education and the Law* , 13 (4), 304-317.
- Varnham, S. (2002). "Copping out or copying? Do Cheats Prosper? An exploration of the legal issues relating to students challenging academic decisions". *Australia and New Zealand Journal of Law and Education* , 7 (1), 21-37.
- Varnham, S., & Kamvounias, P. (2009). Unfair, Unlawful, or Just Unhappy? Issues surrounding complaints of discrimination made by students against their universities in Australia. *Australia and New Zealand Journal of Law and Education* , 14 (1), Forthcoming.
- Wade, H. (1960). "Judicial Control of Universities:..". *The Law Quarterly Review* , 85, 468-472.

- Warburton, G. (1985). "Taking Student Rights Seriously: Rights of Inspection and Challenge". *University of New South Wales Law Journal* , 8, 362-379.
- Whalley, P., & Evans, G. (1998). "The University Visitor - An Unwanted Legacy of Empire or a Model of University Governance for the Future?". *Macarthur Law Review* , 2, 109-126.
- Whalley, P., & Price, D. (1995). "The University Visitor in Western Australia". *Western Australian Law Review* , 25, 146-165.
- Whittaker, S. (2001a). "Judicial Review in Public Law and in Contract Law: The Example of 'Student Rule'". *Oxford Journal of Legal Studies* .
- Whittaker, S. (2001b). "Public and Private Law-Making: Subordinate Legislation, Contracts and the Status of 'Student Rules'". *Oxford Journal of Legal Studies* , 21 (1), 103-128.
- Williams, G. (1993). "Total Quality Management in Higher Education: Panacea or Placebo?". *Higher Education* , 25, 229.
- Williams, P. (1996). "Suing for Negligent Teaching: An Australian Perspective". *Journal of Law and Education* , 25 (2), 281-307.
- Wyburn, M. (2008). "Disclosure of Prior Student Academic Misconduct in Admission to Legal Practice: Lessons for Universities and the Court". *Queensland University of Technology Law and Justice Journal* , 8 (2), 1.
- Yeo, S. (2002). "The Responsibility of Universities for their Students' Personal Safety". *Southern Cross University Law Review* , 6, 77-105.
- Zolandz, M. (2000). "Storming the Ivory Tower: Renewing the Breach of Contract Claim by Students Against Universities". *George Washington Law Review* , 69 (1), 91-108.

Appendix 1 – List of Cases (Alphabetical Order)

Abdulla v The University of Sydney (No 1) [1997] NSW EOT, No 130/1996 (18 April 1997)

Adjapawn v University of New England [2008] NSWADT 209

Anderson v Pro-Vice Chancellor, Charles Sturt University [2003] NSWADT 121 (23 May 2003)

Arsenin v George & Anor [2003] ACTSC 33

Arsenin v University of Canberra [2006] ACTAAT 27

Bahonko v Royal Melbourne Institute of Technology & Ors [2006] FCA 1492 (24 November 2006); [2006] FCA 1325 (11 October 2006); [2007] HCATrans 22 (2 February 2007); [2007] HCATrans 524 (6 September 2007); [2008] FCAFC 16 (28 February 2008);

Bayley-Jones v University of Newcastle (1990) 22 NSWLR 424

BE v University of Technology, Sydney [2008] NSWADT 139 (14 May 2008); [2009] NSWADTAP 22 (9 April 2009)

Brackenreg v Queensland University of Technology [1999] QADT 11 (20 December 1999)

Bray v The University of Melbourne & Ors [2001] VSC 391 (19 October 2001)

Chung v University of Sydney [2001] FMCA 94 (20 September 2001); [2002] FCA 186 (21 February 2002); [2002] HCATrans 87 (5 November 2002)

Cooley v Australian National University [2007] ACTDT 2 (14 February 2007)

Darwish v Deakin University [2002] VCAT 87 (22 February 2002)

DO v University of New South Wales [2002] NSWADT 211 (28 October 2002); [2003] NSWADTAP 9 (31 March 2003)

Dudzinski v Griffith University (2000) EOC 93-079 (23 February 2000)

Dudzinski v Griffith University (2000) EOC 93-094 (3 June 2000)

Dudzinski v Kellow & Ors [1999] FCA 1264 (27 August 1999)

Dudzinski v Kellow & Ors [1999] FCA 1665 (23 November 1999)

Dudzinski v Kellow & Ors [1999] FCA 390 (8 April 1999)

Dudzinski v Kellow & Ors [2002] FCA 266 (15 March 2002); [2002] FCA 665 (22 May 2002); [2002] FCA 1364 (31 October 2002); [2002] FCAFC 402 (21 November 2002); [2003] FCA 103 (20 February 2003); [2003] FCA 143 (3 March 2003); [2003] FCA 238 (24 March 2003); [2003] FCA 755 (10 July 2003); [2003] FCA 798 (25 July 2003); [2003] FCAFC 207 (5 September 2003); [2003] HCA Trans 375 (18 September 2003); [2004] HCA Trans 376 (6 October 2004); [2005] HCA Trans 069 (3 March 2005)

Elmaraazy v University of NSW & Ors [1996] HREOCA 17 (17 July 1996)

Fainstein v University of New South Wales and Anor [2004] NSWADT 26 (10 February 2004)

Fennell v Australian National University [1999] FCA 989 (22 July 1999); (1999) FCA 1044

FM v Macquarie University [2003] NSWADT 78; [2003] NSWADTAP 43; [2004] NSWADTAP 37; [2005] NSWCA 192

Forster, Ex parte; Re University of Sydney [1964] NSW R 1000; [1963] SR (NSW) 723; (1963) 80 WN (NSW) 1047

Gallant v Queensland University of Technology [2004] QADT 2 (10 February 2004)

Gorman v University of Sydney & Ors [1999] NSWSC 240 (15 March 1999)

Griffith University v Tang [2005] HCA 7; (2005) 221 CLR 99

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Harding v University of New South Wales, Matter No 10289/98 [1998] NSWSC 439 (2 October 1998); [1999] NSWCA 58; [2001] NSWADT 75, [2001] NSWSC 1198 (29 November 2001), [2002] NSWADTAP 36, [2002] NSWSC 113 (1 March 2003), [2003] NSWADT 75 (15 April 2003)

Hassan v Hume & Anor [2003] FMCA 476; [2004] FCA 886

Hazan v La Trobe University [1993] 1 VR 7; (No 2) [1993] 1 VR 568

Hinchcliffe v University of Sydney [2004] FMCA 85

Hollows v Macquarie University [2009] NSWADT 23 (6 February 2009)

Hoang v Monash University [2001] VSC 376 (4 October 2001)

Huang v University of New South Wales & Ors [2005] FMCA 463 (16 May 2005); [2006] FMCA 220 (16 February 2006); [2006] FCA 380 (30 March 2006); [2006] FCA 626 (25 May 2006); [2008] FMCA 11 (11 February 2008); [2008] FMCA 1578 (24 November 2008); [2008] FCA 1930 (18 December 2008)

Husein v University of Western Sydney [2007] NSWADT 278 (29 November 2007)

Ivins v Griffith University [2001] QSC 086 (29 March 2001)

Ivins v James Cook University [2001] QSC 086 (29 March 2001); [2001] QCA 284 (19 July 2001); [2001] QCA 393 (24 October 2001)

James, Brown, Gleeson, Jones & Elliott v Australian National University [1984] AATA 501 (23 November 1984)

Jandruwanda v University of South Australia & Ors [2003] FMCA 205 (21 May 2003); [2003] FMCA 233 (2 June 2003); [2003] FCA 1456 (12 December 2003); [2004] FCA 219 (15 March 2004)

Jenkins v Charles Sturt University [2008] NSWSC 50 (13 February 2008)

Joseph v La Trobe University [2004] FCA 746 (15 June 2004);

King, Ex parte: Re The University of Sydney (1943) 33 SR (NSW), (15 April 1943)

Kinsela v Queensland University of Technology [1997] HREOCA 5 (24 February 1997)

Kunhi v University of New England [2008] NSWADT 333 (16 December 2008)

Kwan v The University of Sydney Foundation Programme Pty Ltd v Ors [2002] NSWCTTT 83 (8 May 2002)

Lalogianni v Australian National University [2001] AATA 347 (26 April 2001); [2003] FMCA 9 (15 January 2003)

Lam v University of Sydney [1996] NSWSC (unreported, Cooper AJ, November 1996); [1997] NSWCA (unreported, Gleeson CJ Mason P Beazley JA, 22 April 1997)

Lancaster v Macquarie University [1996] NSW EOT (No 134 of 1995) (18 September 1996)

Langley v Niland & Anor [1981] 2 NSWLR 104

Leiber v Australian National University [2001] ACTDT 6 (23 November 2001)

Liu v University of Melbourne [2002] VCAT 896 (28 August 2002)

Loc Tiem Hoang v Monash University [2001] VSC 376 (4 October 2001)

Loizou v University of Melbourne & Ors [1999] VCAT 634 (31 March 1999); [2000] VSC 1 (28 January 2000)

Luck v University of Southern Queensland [2008] AATA 539 (22 October 2008); [2008] FCA 1582 (22 October 2008); [2008] FCA 1594 (22 October 2008); [2009] FCA 479 (7 May 2009)

M v University of Tasmania [1986] TASR 74

Mallett v Edith Cowan University [2004] WAICmr 20 (10 December 2004)

Mallett v Edith Cowan University [2005] WAICmr 7 (11 May 2005)

Margan v University of Technology, Sydney [2003] NSWADT 133 (5 June 2003); [2003] NSWADTAP 65 (5 December 2003); [2005] NSWADT 194 (19 August 2005)

Mathews v University of Queensland [2001] FCA 1784; (10 December 2001); [2002] FCA 414 (8 April 2002)

Mazukov v University of Tasmania [2000] FCA 1091 (4 August 2000); [2002] FCAFC 166 (31 May 2002); [2003] FCA 253 (19 March 2003); [2004] FCAFC 159 (17 June 2004)

Mazukov v University of Tasmania [2004] TASADT 8 (5 August 2004); [2004] TASSC 68 (2 July 2004)

Mazukov v University of Tasmania [2005] TASADT5 (5 May 2005)

McKean v University of Melbourne [2007] VCAT 1310 (31 July 2007); [2008] VSC 325 (28 August 2008)

Metwally v University of Wollongong (1984) EOC ¶92-030 (Equal Opportunity Tribunal); (1984) 158 CLR 447

Mishra v University of Technology, Sydney [1999] NSWSC 1324 (25 February 2000); [2000] NSWCA 310 (25 October 2000); [2000] NSWCA 312 (25 October 2000); [2001] HCATrans 435-6 (14 September 2001)

Muldowney v Baillie & Flinders University of South Australia [1999] SASC 164 (19 April 1999)

Muldowney v Flinders University of South Australia [2002] SASC 313 (17 September 2002)

NHL v University of Queensland [1997] QICMR 1 (14 February 1997)

Ogawa v University of Melbourne [2004] FCA 491 (26 April 2004)

Ogawa v University of Melbourne [2004] FMCA 515 (27 July 2004)

Ogawa v University of Melbourne (No 2) [2004] FMCA 492 (5 August 2004)

Ogawa v University of Melbourne [2004] FCA 1099 (10 August 2004)

Ogawa v University of Melbourne (No 3) [2004] FMCA 536 (3 September 2004)

Ogawa v University of Melbourne (No 2) [2004] FCA 1275 (1 October 2004)

Ogawa v University of Melbourne [2005] FMCA 1118 (8 August 2005)

Ogawa v University of Melbourne [2005] FCA 1150 (12 August 2005)

Ogawa v University of Melbourne (No 2) [2005] FMCA 1216 (18 August 2005)

Ogawa v University of Melbourne [2005] FCA 1139 (22 August 2005)

Ogawa v University of Melbourne [2005] FCA 1208 (30 August 2005)

Orr v Bond University (unreported, Supreme Court of Queensland, Dowsett J, 3 April 1996)

Orr v Bond University [1997] QICmr 14; [1997] 4 QAR 130 (8 October 1997)

Page v Central Queensland University [2006] QSC (unreported 12 May 2006); [2006] QCA 478 (17 November 2006)

PC v University of New South Wales [2005] NSWADT 157 (8 July 2005); [2005] NSWADT 264 (22 November 2005); [2005] NSWADTAP 72 (20 December 2005); [2006] NSWADTAP 54 (12 October 2006); [2007] NSWADTAP 11 (1 March 2007); [2007] NSWADT 286 (10 December 2007)

Pineiro v Australian Catholic University [2006] AATA 371 (28 April 2006)

Pinheiro v University of Queensland [2006] AATA 1053 (8 December 2006)

QE v Macquarie University [2008] NSWADT 144 (26 May 2008)

Quiba v University of Tasmania [2003] TasADT 2 (NSW Ombudsman, 2006)

R v University of Sydney; ex parte Drummond; (1943) 67 CLR 95; [1943] HCA 11 (11 June 1943)

Rabel v Swinburne University of Technology [1997] VADT 56 (16 June 1997)

Rana v Flinders University of South Australia [2004] FMCA 325 (26 February 2004)

Rana v Flinders University of South Australia [2005] FMCA 1473 (24 November 2005)

Rana v University of Adelaide & Ors [2008] FCA 365 (17 March 2008); [2008] FCA 494 (7 April 2008); [2008] FCA 940 (17 June 2008); [2008] FCA 941 (17 June 2008)

Rana v University of South Australia [2003] FMCA 525 (21 November 2003); [2004] FCA 231 (5 March 2004); [2004] FCA 559;

Rana v University of South Australia [2006] FMCA 1797 (23 November 2006)

Rana v University of South Australia [2007] FCA 816 (31 May 2007); [29007] FCA 941 (19 June 2007); [2007] FCAFC 188 (4 December 2007); [2008] HCASL 242 (15 May 2008); [2008] FCA 1903 (17 December 2008);

Redfern v University of Canberra [1995] AATA 200 (25 July 1995)

Reyes-Gonzales v Sydney Institute of Technology [1998] NSWEOOT (6 March 1998)

RMIT v Savrimootoo (Anti Discrimination) [2006] VCAT 1223 (11 May 2006)

Sekhon v Ballarat University College [1993] HREOCA 17 (30 July 1993)

Simjanoski & Ors v La Trobe University & Ors [2004] VSC 180 (27 May 2004); [2004] VSCA 125 (23 July 2004)

Simundic v University of Newcastle [2004] NSWADT 206 (21 September 2004); [2005] NSWSC 586 (22 June 2005); [2006] NSWSC 563 (22 June 2006); [2007] FCA 676 (11 May 2007); [2007] FCAFC 144 (31 August 2007)

Sluggett v Flinders University of South Australia [2000] HREOC No H96/2 (14 July 2000)

Sluggett v Flinders University of South Australia [2003] FCAFC 27 (5 March 2003)

Sluggett v Human Rights Equal Opportunity Commission [2002] FCA 987 (9 August 2002)

Sweeney v The University of Sydney & Anor (1992) 27 ALD 214

Tadros v Charles Sturt University & Ors [2008] NSWSC 1140 (30 October 2008)

Tang v Griffith University [2003] QSC 22 (14 February 2003); [2003] QCA 571 (19 December 2003); [2004] HCARTrans 40 (3 March 2004); [2004] HCARTrans 103 (2 April 2004); [2004] HCARTrans 227 (21 June 2004); [2005] HCA 7; (2005) 221 CLR 99; (2005) 213 ALR 724; (2005) 79 ALJR 627; (2005) 82 ALD 289 (3 March 2005)

Torres v Monash University [2006] VCAT 1208 (9 May 2006)

Tu v University of Sydney [2002] NSWADTAP 19 (31 May 2002); NSWADTAP) 25 (13 August 2002); [2003] NSWCA 170 (25 June 2003)

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Wilde v University of Sydney [2003] NSWADT 206 (2 September 2003); [2004] NSWADT 16 (28 January 2004); [2004] NSWADTAP 32 (27 July 2004)

Williams v Monash University [2005] VCAT 958 (15 April 2005)

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Zhang v University of Tasmania [2008] FCA 516 (24 April 2008)

Appendix 2 – List of Cases (Cross Referenced By Complaints Categories)

STUDENT	UNIVERSITY	CITATION	CAUSE OF ACTION	UNDERLYING COMPLAINT(S)
ABDULLA	UNIVERSITY OF SYDNEY	[1997] NSWEO, 130/96	DISCRIMINATION - RACE	EXCLUSION
ADJAPAWN	UNIVERSITY OF NEW ENGLAND	[2008] NSWADT 209	DISCRIMINATION - RACE	EVICTON
ANDERSON	PRO-VICE-CHANCELLOR, CHARLES STURT UNIVERSITY	[2003] NSWADT 121	FREEDOM OF INFORMATION	ACCESS TO ASSESSMENT INFORMATION
ARSENIN	GEORGE (UNIVERSITY OF CANBERRA)	[2003] ACTSC 33	PROTECTION ORDER (BY UNIVERSITY STAFF AGAINST STUDENT)	NOT SPECIFIED
ARSENIN	UNIVERSITY OF CANBERRA	[2006] ACTAAT 27	FREEDOM OF INFORMATION	NOT SPECIFIED
BAHONKO	RMIT UNIVERSITY	[2006] FCA 1325		REFUSAL TO GRANT DOCTORATE
BAHONKO	RMIT UNIVERSITY	[2006] FCA 1492	DISCRIMINATION - RACE & DISABILITY	REFUSAL TO GRANT DOCTORATE
BAHONKO	RMIT UNIVERSITY & ORS	[2007] HCATrans 22	SPECIAL LEAVE APPLICATION	REFUSAL TO GRANT DOCTORATE
BAHONKO	RMIT UNIVERSITY & ORS	[2007] HCATrans 524	SPECIAL LEAVE APPLICATION	REFUSAL TO GRANT DOCTORATE
BAHONKO	RMIT UNIVERSITY	[2008] FCAFC 16	APPEAL	REFUSAL TO GRANT DOCTORATE
BAILEY	AUSTRALIAN NATIONAL UNIVERSITY	[1995] HREOCA 27	DISCRIMINATION - SEX	FAILURE TO APPOINT AS RESEARCH FELLOW
BAYLEY-JONES	UNIVERSITY OF NEWCASTLE	(1990) 22 NSWLR 424	JUDICIAL REVIEW	TERMINATION OF CANDIDATURE
BE	UNIVERSITY OF TECHNOLOGY SYDNEY	[2008] NSWADT 139	BREACH OF PRIVACY	EXCLUSION
BE	UNIVERSITY OF TECHNOLOGY SYDNEY	[2009] NSWADTAP 22	APPEAL	EXCLUSION
BENNETT	UNIVERSITY OF NEW ENGLAND	[2002] NSWADT 175	FREEDOM OF INFORMATION	ACCESS TO PHD NOTES
BKR	QUEENSLAND UNIVERSITY OF TECHNOLOGY	[1999] QICMR 4	FREEDOM OF INFORMATION	ASSESSMENT
BRACKENREG	QUEENSLAND UNIVERSITY OF TECHNOLOGY	[1999] QADT 11	DISCRIMINATION - DISABILITY	EXCLUSION
BRAY	UNIVERSITY OF MELBOURNE	[2001] VSC 391	JUDICIAL REVIEW	DENIAL OF NATURAL JUSTICE, SEVERITY OF PENALTY
CHUNG	UNIVERSITY OF SYDNEY	[2001] FMCA 94	DISCRIMINATION - DISABILITY & RACE	EXCLUSION
CHUNG	UNIVERSITY OF SYDNEY	[2002] FCA 186	DISCRIMINATION - DISABILITY & RACE	EXCLUSION
CHUNG	UNIVERSITY OF SYDNEY	[2002] HCA Trans 87	APPEAL	EXCLUSION
CLARK	UNIVERSITY OF MELBOURNE	[1978] VR 457	INJUNCTION	APPROPRIATION OF STUDENT FUNDS

STUDENT	UNIVERSITY	CITATION	CAUSE OF ACTION	UNDERLYING COMPLAINT(S)
CLARK	UNIVERSITY OF MELBOURNE (NO 2)	[1979] VR 66	APPEAL	POWER TO MAKE REGULATIONS RE APPROPRIATION OF STUDENTS FUNDS
COOLEY	AUSTRALIAN NATIONAL UNIVERSITY	[2007] ACTDT 2	DISCRIMINATION - DISABILITY	REASONABLE ACCOMMODATION
DARWISH	DEAKIN UNIVERSITY	[2002] VCAT 87	FREEDOM OF INFORMATION	ACCESS TO INFORMATION
DO	UNIVERSITY OF NEW SOUTH WALES	[2002] NSWADT 211	BREACH OF PRIVACY	TERMINATION OF CANDIDATURE
DO	UNIVERSITY OF NEW SOUTH WALES	[2003] NSWADTAP 9	APPEAL	TERMINATION OF CANDIDATURE
DRUMMOND	UNIVERSITY OF SYDNEY	[1943] HCA 11	INVALIDITY OF REGULATIONS	FAILURE TO ADMIT
DUDZINSKI	GRIFFITH UNIVERSITY	(2000) EOC 93-079	DISCRIMINATION - SEX	ADVANCED STANDING
DUDZINSKI	GRIFFITH UNIVERSITY	(2000) EOC 93-094	DISCRIMINATION - SEX	ADVANCED STANDING
DUDZINSKI	KELLOW (GRIFFITH UNIVERSITY)	[1999] FCA 390	DISCRIMINATION – RACE & SEX, MISLEADING & DECEPTIVE CONDUCT, DEFAMATION, INJURIOUS FALSEHOOD	ADVANCED STANDING
DUDZINSKI	KELLOW (GRIFFITH UNIVERSITY)	[2000] FCA 740	COSTS APPLICATION	ADVANCED STANDING
EDH	GRIFFITH UNIVERSITY	[1996] QICMR 14	FREEDOM OF INFORMATION	ACCESS TO THIRD PARTY THESIS
ELMARAAZEY	UNIVERSITY OF NEW SOUTH WALES	[1996] HREOCA 17	DISCRIMINATION - RACE	TERMINATION OF CANDIDATURE
FAINSTEIN	UNIVERSITY OF NEW SOUTH WALES	[2004] NSWADT 26	DISCRIMINATION - SEXUALITY	FAILURE TO ADMIT
FENNELL	AUSTRALIAN NATIONAL UNIVERSITY	[1999] FCA 989	MISLEADING & DECEPTIVE CONDUCT	FALSE REPRESENTATION IN ADVERTISING MATERIAL
FENNELL	AUSTRALIAN NATIONAL UNIVERSITY	[1999] FCA 1044	MISLEADING & DECEPTIVE CONDUCT	FALSE REPRESENTATION IN ADVERTISING MATERIAL
FM	MACQUARIE UNIVERSITY	[2003] NSWADT 78	BREACH OF PRIVACY	FAILURE TO ADMIT
FM	MACQUARIE UNIVERSITY	[2003] NSWADTAP 43	APPEAL	FAILURE TO ADMIT
FM	MACQUARIE UNIVERSITY	[2004] NSWADTAP 37	APPEAL	FAILURE TO ADMIT
FM	MACQUARIE UNIVERSITY	[2005] NSWCA 192	APPEAL	FAILURE TO ADMIT
FORSTER	UNIVERSITY OF SYDNEY	[1963] SR NSW 723	JUDICIAL REVIEW	EXCLUSION
GALLANT	QUEENSLAND UNIVERSITY OF TECHNOLOGY	[2004] QADT 2	DISCRIMINATION - DISABILITY	UNFAIR TREATMENT RE MISCONDUCT PROCEEDINGS
GORMAN	UNIVERSITY OF SYDNEY	[1999] NSWSC 240	NOT SPECIFIED	DISSATISFACTION WITH COURSE CONTENT

STUDENT	UNIVERSITY	CITATION	CAUSE OF ACTION	UNDERLYING COMPLAINT(S)
GRIMSHAW	QUEENSLAND UNIVERSITY OF TECHNOLOGY	[2004] QADT 5	DISCRIMINATION - DISABILITY	UNFAIR TREATMENT RE MISCONDUCT PROCEEDINGS
HANNA	UNIVERSITY OF NEW ENGLAND	[2006] NSWSC 122	JUDICIAL REVIEW, TRADE PRACTICES CLAIMS	ADVANCED STANDING
HARDING	UNIVERSITY OF NEW SOUTH WALES	[1998] NSWSC 439	INTERLOCUTORY APPLICATION	CLAIM FOR PRIVILEGE
HARDING	UNIVERSITY OF NEW SOUTH WALES	[1999] NSWCA 58	APPEAL	EXCLUSION FROM UNIVERSITY
HARDING	VICE-CHANCELLOR, UNIVERSITY OF NEW SOUTH WALES	[2001] NSWADT 205	DISCRIMINATION - SEX & DISABILITY	EXCLUSION
HARDING	UNIVERSITY OF NEW SOUTH WALES	[2001] NSWSC 301	NOTICE OF MOTION SEEKING ORDER TO ENROL	EXCLUSION
HARDING	VICE-CHANCELLOR UNIVERSITY OF NEW SOUTH WALES	[2001] NSWSC 1198	COSTS APPLICATION	EXCLUSION
HARDING	UNIVERSITY OF NEW SOUTH WALES	[2002] NSWSC 113	JUDICIAL REVIEW	EXCLUSION FROM UNIVERSITY
HARDING	UNIVERSITY OF NEW SOUTH WALES	[2002] NSWCA 325	APPEAL	EXCLUSION
HARDING	UNIVERSITY OF NEW SOUTH WALES	[2002] NSWCA 409	APPEAL	EXCLUSION
HARDING	VICE-CHANCELLOR, UNIVERSITY OF NEW SOUTH WALES	[2002] NSWADTAP 36	APPEAL	EXCLUSION
HARDING	UNIVERSITY OF NEW SOUTH WALES	[2003] NSWADT 74	APPLICATION TO DISMISS	EXCLUSION
HARDING	VICE-CHANCELLOR UNIVERSITY OF NEW SOUTH WALES	[2003] NSWADT 75	DISCRIMINATION - DISABILITY & SEX	FAILURE TO ADMIT
HASSAN	HUME (UNSW)	[2003] FMCA 476	DISCRIMINATION - RACE	TERMINATION OF CANDIDATURE
HASSAN	HUME (UNSW)	[2004] FCA 886	APPEAL	TERMINATION OF CANDIDATURE
HAZAN	LA TROBE UNIVERSITY	[1993] 1 VR 7	JUICIAL REVIEW	REVOCATION OF DEGREE FOR FALSIFICATION OF ACADEMIC RECORD
HAZAN (NO 2)	LA TROBE UNIVERSITY	[1993] 1 VR 568	JUDICIAL REVIEW	REVOCATION OF DEGREE FOR FALSIFICATION OF ACADEMIC RECORD
HINCHLIFFE	UNIVERSITY OF SYDNEY	[2004] FMCA 85	DISCRIMINATION - DISABILITY	REASONABLE ACCOMMODATION
HINCHLIFFE	UNIVERSITY OF SYDNEY	[2004] FMCA 640	COSTS APPLICATION	REASONABLE ACCOMMODATION
HOANG	MONASH UNIVERSITY	[2001] VSC 376	JUDICIAL REVIEW	EXCLUSION
HOLLOWS	MACQUARIE UNIVERSITY	[2009] NSWADT 23	DISCRIMINATION - RACE & DISABILITY	FAILURE TO ADMIT

STUDENT	UNIVERSITY	CITATION	CAUSE OF ACTION	UNDERLYING COMPLAINT(S)
HUANG	UNIVERSITY OF NEW SOUTH WALES	[2005] FMCA 463	DISCRIMINATION - RACE, SEX & DISABILITY, SEXUAL HARASSMENT	TERMINATION OF CANDIDATURE
HUANG	UNIVERSITY OF NEW SOUTH WALES	[2006] FCA 380	APPLICATION FOR LEAVE TO APPEAL	TERMINATION OF CANDIDATURE
HUANG	UNIVERSITY OF NEW SOUTH WALES	[2006] FCA 595	APPLICATION FOR ADJOURNMENT	TERMINATION OF CANDIDATURE
HUANG	UNIVERSITY OF NEW SOUTH WALES	[2006] FMCA 220	DISCRIMINATION - RACE, SEX & DISABILITY, SEXUAL HARASSMENT	TERMINATION OF CANDIDATURE
HUANG	UNIVERSITY OF NEW SOUTH WALES (NO 2)	[2006] FCA 596	FRESH EVIDENCE APPLICATION	TERMINATION OF CANDIDATURE
HUANG	UNIVERSITY OF NEW SOUTH WALES (NO 3)	[2006] FCA 626	DISCRIMINATION - RACE, SEX & DISABILITY, SEXUAL HARASSMENT	TERMINATION OF CANDIDATURE
HUANG	UNIVERSITY OF NEW SOUTH WALES	[2008] FMCA 11	DISCRIMINATION - RACE, SEX & DISABILITY, SEXUAL HARASSMENT	TERMINATION OF CANDIDATURE
HUANG	UNIVERSITY OF NEW SOUTH WALES	[2008] FMCA 1578	APPLICATION FOR LEAVE TO AMEND	TERMINATION OF CANDIDATURE
HUANG	UNIVERSITY OF NEW SOUTH WALES	[2008] FCA 1930	APPEAL	TERMINATION OF PHD CANDIDATURE
HUSEIN	UNIVERSITY OF WESTERN SYDNEY	[2007] NSWADT 278	DISCRIMINATION - RACE, VICTIMISATION & HARASSMENT	WRONG INFORMATION, ASSESSMENT
IVINS	GRIFFITH UNIVERSITY	[2001] QCA 393	APPEAL	ASSESSMENT
IVINS	GRIFFITH UNIVERSITY	[2001] QSC 086	JUDICIAL REVIEW	ASSESSMENT
IVINS	JAMES COOK UNIVERSITY	[2001] QCA 284	APPEAL	ASSESSMENT
IVINS	JAMES COOK UNIVERSITY	[2001] QCA 464	APPEAL	ASSESSMENT
JAMES, BROWN, GLEESON, JONES, ELLIOTT	AUSTRALIAN NATIONAL UNIVERSITY	[1984] AATA 501	FREEDOM OF INFORMATION	DENIAL OF ACCESS TO ASSESSMENT INFORMATION
JANDRUWANDA	UNIVERSITY OF SOUTH AUSTRALIA	[2003] FMCA 205	DISCRIMINATION - RACE	FAILURE TO ADMIT
JANDRUWANDA	UNIVERSITY OF SOUTH AUSTRALIA	[2003] FMCA 233	DISCRIMINATION - RACE	FAILURE TO ADMIT
JANDRUWANDA	UNIVERSITY OF SOUTH AUSTRALIA	[2004] FCA 219	APPEAL	FAILURE TO ADMIT
JANDRUWANDA	UNIVERSITY OF SOUTH AUSTRALIA	[2003] FCA 1456	APPEAL	FAILURE TO ADMIT
JENKINS	CHARLES STURT UNIVERSITY	[2008] NSWSC 50	JUDICIAL REVIEW	EXCLUSION
JOSEPH	LA TROBE UNIVERSITY	[2004] FCA 746	EXCLUSIVE DEALING & COERCION	PAYMENT OF SERVICE FEES
KING	UNIVERSITY OF	(1943) 44 SRNSW 19	VALIDITY OF	FAILURE TO ADMIT

STUDENT	UNIVERSITY	CITATION	CAUSE OF ACTION	UNDERLYING COMPLAINT(S)
KINSELA	SYDNEY QUEENSLAND UNIVERSITY OF TECHNOLOGY	[1997] HREOCA 5	REGULATIONS DISABILITY DISCRIMINATION	REASONABLE ACCOMMODATION
KUNHI	UNIVERSITY OF NEW ENGLAND	[2008] NSWADT 333	DISCRIMINATION	ASSESSMENT
KWAN	UNIVERSITY OF SYDNEY FOUNDATION PROGRAM PTY LTD & ORS	[2002] NSWCTTT 83	MISLEADING & DECEPTIVE CONDUCT, BREACH OF CONTRACT	DELIVERY OF SERVICES/FACILITIES
LALOGIANNI	AUSTRALIAN NATIONAL UNIVERSITY	[2001] AATA 347	FREEDOM OF INFORMATION	DISCLOSURE OF INFORMATION RELATING TO HARASSMENT ALLEGATION
LALOGIANNI	AUSTRALIAN NATIONAL UNIVERSITY	[2003] FMCA 9	APPEAL	DISCLOSURE OF INFORMATION RELATING TO HARASSMENT ALLEGATION
LAM	UNIVERSITY OF SYDNEY	NSW SUPREME COURT (UNREPORTED), NOVEMBER 1996)	JUDICIAL REVIEW	EXPULSION FOR MISCONDUCT
LAM	UNIVERSITY OF SYDNEY	NSW SUPREME COURT (UNREPORTED), 22 APRIL 1997	APPEAL	EXPULSION FOR MISCONDUCT
LANCASTER	VICE-CHANCELLOR, MACQUARIE UNIVERSITY	[1996] NSWEO [134/1995] (18 September 1996)	DISCRIMINATION - SEX	NON-AWARD OF UNIVERSITY MEDAL
LANGLEY	NILAND & ANOR	[1981] 2 NSWLR 104	DISCRIMINATION - SEX	NOT SPECIFIED
LEIBER	AUSTRALIAN NATIONAL UNIVERSITY	[2001] ACTDT 6	DISCRIMINATION - SEX	FAILURE TO BE OFFERED UNIVERSITY ACCOMMODATION
LIU	UNIVERSITY OF MELBOURNE	[2002] VCAT 896	DISCRIMINATION - RACE	TERMINATION OF CANDIDATURE
LOC TIEN HOANG	MONASH UNIVERSITY	[2001] VSC 376	HARASSMENT AND INTIMIDATION	EXCLUSION
LOIZOU	UNIVERSITY OF MELBOURNE	[1999] VCAT 634	DISCRIMINATION - RACE	ASSESSMENT
LOIZOU	UNIVERSITY OF MELBOURNE	[2000] VSC 1	DISCRIMINATION - RACE	ASSESSMENT
LUCK	UNIVERSITY OF SOUTHERN QUEENSLAND	[2008] AATA 539	FREEDOM OF INFORMATION	NOT SPECIFIED
LUCK	UNIVERSITY OF SOUTHERN QUEENSLAND	[2008] FCA 1582	APPEAL	NOT SPECIFIED
LUCK	UNIVERSITY OF SOUTHERN QUEENSLAND (NO 2)	[2008] FCA 1594	BIAS APPLICATION	NOT SPECIFIED
LUCK	UNIVERSITY OF SOUTHERN QUEENSLAND	[2009] FCA 479	BIAS APPLICATION	NOT SPECIFIED
M	UNIVERSITY OF TASMANIA	[1986] TASR 74	JUDICIAL REVIEW	FAILURE TO ADMIT

STUDENT	UNIVERSITY	CITATION	CAUSE OF ACTION	UNDERLYING COMPLAINT(S)
MALLET	EDITH COWAN UNIVERSITY	[2004] WAICMR 19	FREEDOM OF INFORMATION	DENIAL OF ACCESS TO INFORMATION RE EXCLUSION FROM UNIVERSITY
MALLET	EDITH COWAN UNIVERSITY	[2004] WAICMR 20	FREEDOM OF INFORMATION	DENIAL OF ACCESS TO INFORMATION RE EXCLUSION FROM UNIVERSITY
MALLET	EDITH COWAN UNIVERSITY	[2005] WAICMR 7	FREEDOM OF INFORMATION	DENIAL OF ACCESS TO INFORMATION RE EXCLUSION FROM UNIVERSITY
MARGAN	UNIVERSITY OF TECHNOLOGY SYDNEY	[2003] NSWADT 133	DISCRIMINATION-SEXUALITY	EXCLUSION FROM UNIVERSITY
MARGAN	UNIVERSITY OF TECHNOLOGY SYDNEY	[2003] NSWADTAP 65	APPEAL	EXCLUSION FROM UNIVERSITY
MARGAN	UNIVERSITY OF TECHNOLOGY SYDNEY	[2005] NSWADT 194	DISCRIMINATION - SEXUALITY (RE-HEARING)	EXCLUSION FROM UNIVERSITY
MATHEWS	UNIVERSITY OF QUEENSLAND	[2001] FCA 1784	MISLEADING & DECEPTIVE CONDUCT	INACCURATE COURSE INFORMATION
MATHEWS	UNIVERSITY OF QUEENSLAND	[2002] FCA 414	MISLEADING & DECEPTIVE CONDUCT	INACCURATE COURSE INFORMATION
MAZUKOV	ANTI DISCRIMINATION TRIBUNAL	[2004] TASSC 68	DISCRIMINATION - RACE & DISABILITY	UNFAIR TREATMENT IN MISCONDUCT PROCEEDINGS
MAZUKOV	UNIVERSITY OF TASMANIA	[2000] FCA 1091	JUDICIAL REVIEW	UNFAIR TREATMENT IN MISCONDUCT PROCEEDINGS
MAZUKOV	UNIVERSITY OF TASMANIA	[2002] FCAFC 166	JUDICIAL REVIEW	UNFAIR TREATMENT IN MISCONDUCT PROCEEDINGS
MAZUKOV	UNIVERSITY OF TASMANIA	[2003] FCA 253	JUDICIAL REVIEW	UNFAIR TREATMENT IN MISCONDUCT PROCEEDINGS
MAZUKOV	UNIVERSITY OF TASMANIA	[2004] FCAFC 159	JUDICIAL REVIEW	UNFAIR TREATMENT IN MISCONDUCT PROCEEDINGS
MAZUKOV	UNIVERSITY OF TASMANIA	[2004] TASADT 8	DISCRIMINATION - RACE & DISABILITY	UNFAIR TREATMENT IN MISCONDUCT PROCEEDINGS
MAZUKOV	UNIVERSITY OF TASMANIA	[2005] TASADT 5	DISCRIMINATION - RACE & DISABILITY	UNFAIR TREATMENT IN MISCONDUCT PROCEEDINGS
MCKEAN	UNIVERSITY OF MELBOURNE	[2007] VCAT1310	FREEDOM OF INFORMATION	DENIAL OF ACCESS TO MARKING CRITERIA
MCKEAN	UNIVERSITY OF MELBOURNE	[2008] VSC 325	FREEDOM OF INFORMATION	DENIAL OF ACCESS TO MARKING CRITERIA
METWALLY	UNIVERSITY OF WOLLONGONG	[1984] HCA 74	DISCRIMINATION/CONSTITUTIONAL	FAILURE TO PREVENT HOSTILE ENVIRONMENT
METWALLY	UNIVERSITY OF WOLLONGONG	[1985] HCA 28	DISCRIMINATION	FAILURE TO PREVENT HOSTILE ENVIRONMENT
MISHRA	UNIVERSITY OF TECHNOLOGY	[1999] NSWSC 1324	DISCRIMINATION - RACE	TERMINATION OF CANDIDATURE

STUDENT	UNIVERSITY	CITATION	CAUSE OF ACTION	UNDERLYING COMPLAINT(S)
	SYDNEY			
MISHRA	UNIVERSITY OF TECHNOLOGY SYDNEY	[2000] NSWCA 310	APPLICATION FOR LEAVE TO APPEAL	TERMINATION OF CANDIDATURE
MISHRA	UNIVERSITY OF TECHNOLOGY SYDNEY	[2000] NSWCA 312	APPEAL AGAINST COSTS ORDER	TERMINATION OF CANDIDATURE
MISHRA	UNIVERSITY OF TECHNOLOGY SYDNEY	[2001] HCATrans 435-6	APPLICATION FOR SPECIAL LEAVE	TERMINATION OF CANDIDATURE
MITCHELL	FLINDERS UNIVERSITY OF SOUTH AUSTRALIA	(1992) 57 SASR 573	JUDICIAL REVIEW	NOT SPECIFIED
MULDOWNNEY	FLINDERS UNIVERSITY OF SOUTH AUSTRALIA	[1999] SASC 164	CRIMINAL PROCEEDINGS	UNFAIR TREATMENT BY UNIVERSITY RE RESTRAINING ORDER
MULDOWNNEY	FLINDERS UNIVERSITY OF SOUTH AUSTRALIA	[2002] SASC 313	APPEAL AGAINST COSTS ORDER	UNFAIR TREATMENT BY UNIVERSITY RE RESTRAINING ORDER
NHL	UNIVERSITY OF QUEENSLAND	[1997] QICMR 1	FREEDOM OF INFORMATION	RECORDS RELATING TO SEXUAL HARASSMENT COMPLAINT
OGAWA	UNIVERSITY OF MELBOURNE	[2004] FCA 491	TRADE PRACTICES, JUDICIAL REVIEW, DISCRIMINATION, NEGLIGENCE	REFUSAL TO EXTEND DOCTORATE SUBMISSION
OGAWA	UNIVERSITY OF MELBOURNE	[2004] FMCA 515	TRADE PRACTICES, JUDICIAL REVIEW, DISCRIMINATION, NEGLIGENCE	REFUSAL TO EXTEND DOCTORATE SUBMISSION
OGAWA	UNIVERSITY OF MELBOURNE	[2004] FCA 1099	APPLICATION TO STAY PROCEEDINGS	REFUSAL TO EXTEND DOCTORATE SUBMISSION
OGAWA	UNIVERSITY OF MELBOURNE (NO 2)	[2004] FMCA 492	TRADE PRACTICES, JUDICIAL REVIEW, DISCRIMINATION, NEGLIGENCE	REFUSAL TO EXTEND DOCTORATE SUBMISSION
OGAWA	UNIVERSITY OF MELBOURNE (NO 3)	[2004] FMCA 536	TRADE PRACTICES, JUDICIAL REVIEW, DISCRIMINATION, NEGLIGENCE	REFUSAL TO EXTEND DOCTORATE SUBMISSION
OGAWA	UNIVERSITY OF MELBOURNE	[2005] FCA 1139	TRADE PRACTICES, JUDICIAL REVIEW, DISCRIMINATION, NEGLIGENCE	REFUSAL TO EXTEND DOCTORATE SUBMISSION
OGAWA	UNIVERSITY OF MELBOURNE	[2005] FCA 1150	EXTENSION OF TIME AND LEAVE TO APPEAL	REFUSAL TO EXTEND DOCTORATE SUBMISSION
OGAWA	UNIVERSITY OF MELBOURNE	[2005] FCA 1208	LEAVE TO APPEAL	REFUSAL TO EXTEND DOCTORATE SUBMISSION
OGAWA	UNIVERSITY OF MELBOURNE	[2005] FMCA 1118	TRADE PRACTICES, JUDICIAL REVIEW, DISCRIMINATION, NEGLIGENCE	REFUSAL TO EXTEND DOCTORATE SUBMISSION
OGAWA	UNIVERSITY OF MELBOURNE (NO 2)	[2005] FMCA 1216	TRADE PRACTICES, JUDICIAL REVIEW, DISCRIMINATION, NEGLIGENCE	REFUSAL TO EXTEND DOCTORATE SUBMISSION
OGAWA	UNIVERSITY OF MELBOURNE (NO 2)	[2004] FCA 1275	LEAVE TO APPEAL	REFUSAL TO EXTEND DOCTORATE SUBMISSION

STUDENT	UNIVERSITY	CITATION	CAUSE OF ACTION	UNDERLYING COMPLAINT(S)
ORR	BOND UNIVERSITY	(1996) UNREP QSC	TRADE PRACTICES, JUDICIAL REVIEW, DISCRIMINATION, NEGLIGENCE	FAILURE TO ADMIT
ORR	BOND UNIVERSITY	[1997] QICMR 14	FREEDOM OF INFORMATION: UNIVERSITY 'AGENCY'	ACCESS TO DOCUMENTS
PAGE	CENTRAL QUEENSLAND UNIVERSITY	QUEENSLAND SUPREME COURT, NO BS 1258 of 1999, 12 May 2006	NEGLIGENCE, BREACH OF CONTRACT	FAILURE TO ADMIT
PAGE	CENTRAL QUEENSLAND UNIVERSITY	[2006] QCA 478	APPEAL	FAILURE TO ADMIT
PC	UNIVERSITY OF NEW SOUTH WALES	[2005] NSWADT 157	BREACH OF PRIVACY	RELEASE OF PERSONAL INFORMATION BY UNIVERSITY
PC	UNIVERSITY OF NEW SOUTH WALES	[2005] NSWADTAP 72	APPEAL	RELEASE OF PERSONAL INFORMATION BY UNIVERSITY
PC	UNIVERSITY OF NEW SOUTH WALES NO 2	[2005] NSWADT 264	RESPONDENT'S APPLICATION FOR COSTS	RELEASE OF PERSONAL INFORMATION BY UNIVERSITY
PC	UNIVERSITY OF NEW SOUTH WALES NO 2	[2006] NSWADTAP 54	APPEAL AGAINST COSTS ORDER	RELEASE OF PERSONAL INFORMATION BY UNIVERSITY
PC	UNIVERSITY OF NEW SOUTH WALES	[2007] NSWADT 286	BREACH OF PRIVACY	RELEASE OF PERSONAL INFORMATION BY UNIVERSITY
PC	UNIVERSITY OF NEW SOUTH WALES NO 3	[2007] NSWADTAP 11	COSTS APPLICATION	RELEASE OF PERSONAL INFORMATION BY UNIVERSITY
PINEIRO	AUSTRALIAN CATHOLIC UNIVERSITY	[2006] AATA 371	JUDICIAL REVIEW	DISSATISFACTION WITH COURSE EXPERIENCE AND RESOURCES
PINHEIRO	UNIVERSITY OF QUEENSLAND	[2006] AATA 1053	JUDICIAL REVIEW	ASSESSMENT
QE	MACQUARIE UNIVERSITY	[2008] NSW ADT 144	BREACH OF PRIVACY	AMENDMENT OF STUDENT RECORDS
QUIBA	UNIVERSITY OF TASMANIA	[2003] TASADT 2	DISABILITY DISCRIMINATION	EVICTED FROM UNIVERSITY ACCOMMODATION
RABEL	SWINBURNE UNIVERSITY OF TECHNOLOGY	[1997] VADT 56	DISCRIMINATION - DISABILITY	ASSESSMENT, FAILURE TO GIVE SPECIAL CONSIDERATION, ALLEGED HOSTILE TREATMENT BY UNIVERSITY STAFF
RANA	FLINDERS UNIVERSITY OF SOUTH AUSTRALIA	[2004] FMCA 325	DISCRIMINATION - DISABILITY	FAILURE TO ADMIT
RANA	FLINDERS UNIVERSITY OF SOUTH AUSTRALIA	[2005] FMCA 1473	DISCRIMINATION - DISABILITY	EXCLUSION
RANA	UNIVERSITY OF ADELAIDE	[2008] FCA 365	MISLEADING & DECEPTIVE CONDUCT, DEFAMATION AND BREACH OF DUTY OF CARE	DISCLOSURE OF INFORMATION RELATING TO APPLICANT

STUDENT	UNIVERSITY	CITATION	CAUSE OF ACTION	UNDERLYING COMPLAINT(S)
RANA	UNIVERSITY OF ADELAIDE (NO 2)	[2008] FCA 494	MISLEADING & DECEPTIVE CONDUCT, DEFAMATION AND BREACH OF DUTY OF CARE	FAILURE TO ADMIT, DISCLOSURE OF INFORMATION
RANA	UNIVERSITY OF ADELAIDE	[2008] FCA 940	APPLICATION FOR EXTENSION OF TIME	DISCLOSURE OF INFORMATION RELATING TO APPLICANT
RANA	UNIVERSITY OF ADELAIDE (NO 2)	[2008] FCA 941	MISLEADING & DECEPTIVE CONDUCT, DEFAMATION AND BREACH OF DUTY OF CARE	FAILURE TO ADMIT, DISCLOSURE OF INFORMATION
RANA	UNIVERSITY OF SOUTH AUSTRALIA	[2003] FMCA 525	DISCRIMINATION - DISABILITY	FAILURE TO ADMIT
RANA	UNIVERSITY OF SOUTH AUSTRALIA	[2004] FCA 231	DISCRIMINATION - DISABILITY	FAILURE TO ADMIT
RANA	UNIVERSITY OF SOUTH AUSTRALIA	[2004] FCA 559	DISCRIMINATION - DISABILITY	FAILURE TO ADMIT
RANA	UNIVERSITY OF SOUTH AUSTRALIA	[2006] FMCA 1797	DISCRIMINATION - DISABILITY	REFUSAL OF ENTRY TO UNIVERSITY EVENT
RANA	UNIVERSITY OF SOUTH AUSTRALIA	[2007] FCA 816	MISLEADING & DECEPTIVE CONDUCT, DEFAMATION AND BREACH OF DUTY OF CARE	WRONG INFORMATION RE UNIVERSITY EVENT
RANA	UNIVERSITY OF SOUTH AUSTRALIA	[2007] FCAFC 188	COSTS APPLICATION	WRONG INFORMATION RE UNIVERSITY EVENT
RANA	UNIVERSITY OF SOUTH AUSTRALIA (NO 2)	[2007] FCA 941	COSTS APPLICATION	WRONG INFORMATION RE UNIVERSITY EVENT
RANA	UNIVERSITY OF SOUTH AUSTRALIA	[2008] FCA 1903	DISCRIMINATION - DISABILITY	STAY OF BANKRUPTCY
RANA	UNIVERSITY OF SOUTH AUSTRALIA	[2008] HCASL 242	SPECIAL LEAVE APPLICATION	WRONG INFORMATION RE UNIVERSITY EVENT
REDFERN	UNIVERSITY OF CANBERRA	AAT A94/191, A95/57	FREEDOM OF INFORMATION	ACCESS TO MARKING GUIDES & EXAMINATION SCRIPTS
REYES-GONZALES	SYDNEY INSTITUTE OF TECHNOLOGY	[1998] NSWEO	DISCRIMINATION - DISABILITY & RACE	ASSESSMENT
SAVRIMOOTOO	RMIT UNIVERSITY	[2006] VCAT 1223	DISCRIMINATION - DISABILITY	REASONABLE ACCOMMODATION
SEKHON	BALLARAT UNIVERSITY COLLEGE	[1993] HREOCA 17	DISCRIMINATION - RACE	ALLEGATIONS OF DISCRIMINATION - RACE
SIMJANOSKI	LA TROBE UNIVERSITY	[2004] VSC 180	JUDICIAL REVIEW	EXCLUSION FOR ACADEMIC MISCONDUCT
SIMJANOSKI	LA TROBE UNIVERSITY	[2004] VSCA 125	APPEAL	ACADEMIC MISCONDUCT
SIMUNDIC	UNIVERSITY OF NEWCASTLE	[2004] NSWADT 206	DISCRIMINATION - RACE & DISA	EXCLUSION

STUDENT	UNIVERSITY	CITATION	CAUSE OF ACTION	UNDERLYING COMPLAINT(S)
SIMUNDIC	UNIVERSITY OF NEWCASTLE	[2005] NSWSC 586	PERSONAL INJURY, NEGLIGENCE & DEFAMATION	EXCLUSION
SIMUNDIC	UNIVERSITY OF NEWCASTLE	[2006] NSWSC 563	PERSONAL INJURY, NEGLIGENCE & DEFAMATION	EXCLUSION
SIMUNDIC	UNIVERSITY OF NEWCASTLE	[2007] FCA 676	DISCRIMINATION - DISABILITY	EXCLUSION
SIMUNDIC	UNIVERSITY OF NEWCASTLE	[2007] FCAFC 144	APPEAL	EXCLUSION
SLUGGETT	FLINDERS UNIVERSITY OF SOUTH AUSTRALIA	[2002] FCA 987	DISCRIMINATION - DISABILITY	FAILURE TO MAKE ACCOMMODATIONS
SLUGGETT	FLINDERS UNIVERSITY OF SOUTH AUSTRALIA	[2002] FCA 1060	DISCRIMINATION - DISABILITY	REASONABLE ACCOMMODATION
SLUGGETT	FLINDERS UNIVERSITY OF SOUTH AUSTRALIA	[2003] FCAFC 27	DISCRIMINATION - DISABILITY	REASONABLE ACCOMMODATION
SWEENEY	UNIVERSITY OF SYDNEY	(1992) 27 ALD 214	JUDICIAL REVIEW	FAILURE TO ADMIT
TADROS	CHARLES STURT UNIVERSITY	[2008] NSWSC 1140	JUDICIAL REVIEW	SUSPENSION FOR MISCONDUCT
TANG	GRIFFITH UNIVERSITY	[2003] QSC 22	STATUTORY JUDICIAL REVIEW	ACADEMIC MISCONDUCT
TANG	GRIFFITH UNIVERSITY	[2003] QCA 571	APPEAL	ACADEMIC MISCONDUCT
TANG	GRIFFITH UNIVERSITY	[2004] HCA TRANS 40	SPECIAL LEAVE APPLICATION	ACADEMIC MISCONDUCT
TANG	GRIFFITH UNIVERSITY	[2004] HCA TRANS 103	SPECIAL LEAVE APPLICATION	ACADEMIC MISCONDUCT
TANG	GRIFFITH UNIVERSITY	[2005] HCA 7; (2005) 221 CLR 99; (2005) 213 ALR 724; (2005) 79 ALJR 627; (2005) 82 ALD 289 (3 March 2005)	APPEAL	ACADEMIC MISCONDUCT
TANG	GRIFFITH UNIVERSITY	[2004] HCA TRANS 227	SPECIAL LEAVE APPLICATION	ACADEMIC MISCONDUCT
TORRES	MONASH UNIVERSITY	[2006] VCAT 1208	DISCRIMINATION - DISABILITY	FAILURE TO RE-ADMIT AFTER WITHDRAWAL
TU	UNIVERSITY OF SYDNEY	[2001] NSWADT	DISCRIMINATION - RACE	EXCLUSION
TU	UNIVERSITY OF SYDNEY	[2002] NSWADTAP 19	APPEAL	EXCLUSION
TU	UNIVERSITY OF SYDNEY	[2002] NSWADTAP 25	COSTS APPLICATION	EXCLUSION
TU	UNIVERSITY OF SYDNEY	[2003] NSWCA 170	APPEAL	EXCLUSION
VZ	UNIVERSITY OF NEWCASTLE	[2008] NSWADT 178	BREACH OF PRIVACY	ACADEMIC SUPERVISION
VZ	UNIVERSITY OF NEWCASTLE	[2009] NSWADT 17 & 18	BREACH OF PRIVACY	ACADEMIC SUPERVISION
W	FLINDERS UNIVERSITY OF SOUTH AUSTRALIA	[1998] HREOCA 19	DISCRIMINATION - DISABILITY	EXCLUSION

STUDENT	UNIVERSITY	CITATION	CAUSE OF ACTION	UNDERLYING COMPLAINT(S)
WALSH	UNIVERSITY OF TECHNOLOGY SYDNEY	[2007] FCA 1042	TRADE PRACTICES ACT COSTS	ASSESSMENT
WALSH	UNIVERSITY OF TECHNOLOGY SYDNEY	[2007] FCA 1288	TRADE PRACTICES ACT	ASSESSMENT
WALSH	UNIVERSITY OF TECHNOLOGY SYDNEY	[2007] FCA 1308	TRADE PRACTICES ACT	ASSESSMENT
WALSH	UNIVERSITY OF TECHNOLOGY SYDNEY	[2007] FCA 880	TRADE PRACTICES ACT	ASSESSMENT
WECKER	UNIVERSITY OF TECHNOLOGY SYDNEY	[2005] NSWADT 232	DISCRIMINATION - DISABILITY	MISCONDUCT PROCEEDINGS
WECKER	UNIVERSITY OF TECHNOLOGY SYDNEY	[2006] NSWADT 340	DISCRIMINATION - DISABILITY	MISCONDUCT PROCEEDINGS
WECKER	UNIVERSITY OF TECHNOLOGY SYDNEY	[2007] NSWADTAP 15	DISCRIMINATION - DISABILITY	MISCONDUCT PROCEEDINGS
WECKER	UNIVERSITY OF TECHNOLOGY SYDNEY	[2007] NSWSC 927	DISCRIMINATION - DISABILITY	MISCONDUCT PROCEEDINGS
WILDE	UNIVERSITY OF SYDNEY	[2002] NSWSC 954	EX PARTE INJUNCTION	MISCONDUCT PROCEEDINGS
WILDE	UNIVERSITY OF SYDNEY	[2003] NSWADT 206	DISCRIMINATION - TRANSGENDER	EXPULSION FOR MISCONDUCT
WILDE	UNIVERSITY OF SYDNEY	[2004] NSWADT 16	DISCRIMINATION - TRANSGENDER	EXPULSION FOR MISCONDUCT
WILDE	UNIVERSITY OF SYDNEY	[2004] NSWADTAP 32	APPEAL AGAINST COSTS ORDER	EXPULSION FOR MISCONDUCT
WILLIAMS	MONASH UNIVERSITY	[2005] VCAT 958	DISCRIMINATION - RELIGIOUS BELIEF	ASSESSMENT
YONIS	UNIVERSITY OF NEW SOUTH WALES	[2005] NSWADT 109	DISCRIMINATION: DISABILITY & RACE	TERMINATION OF COURSE
Z	UNIVERSITY OF A	[2001] NSWADT 110	DISCRIMINATION - SEXUALITY	ASSESSMENT
Z	UNIVERSITY OF A (NO 2)	[2001] NSWADT 138	DISCRIMINATION - SEXUALITY	ASSESSMENT
Z	UNIVERSITY OF A & ORS (NO 4)	[2002] NSWADT 14	DISCRIMINATION - SEXUALITY	ASSESSMENT
Z	UNIVERSITY OF A & ORS	[2003] NSWADT 258	DISCRIMINATION – SEXUALITY	ASSESSMENT
Z	UNIVERSITY OF A & ORS (NO 6)	[2003] NSWADT 260	DISCRIMINATION - SEXUALITY	ASSESSMENT

STUDENT	UNIVERSITY	CITATION	CAUSE OF ACTION	UNDERLYING COMPLAINT(S)
Z	UNIVERSITY OF A & ORS (NO 7)	[2004] NSWADT 81	DISCRIMINATION - SEXUALITY	ASSESSMENT
Z	UNIVERSITY OF A & ORS (NO 8)	[2004] NSWADT 100	DISCRIMINATION - SEXUALITY	ASSESSMENT
Z	UNIVERSITY OF A & ORS (NO 9)	[2005] NSWADT 25	COSTS APPLICATION	ASSESSMENT
ZHANG	UNIVERSITY OF TASMANIA	[2008] FCA 516	DISCRIMINATION - RACE, SEX & DISABILITY	TERMINATION OF CANDIDATURE

Appendix 3 – List of Australian Universities Reviewed

Table A providers under *Higher Education Support Act 2003* (Cth)

1. Australian Catholic University
2. Central Queensland University
3. Charles Darwin University
4. Charles Sturt University
5. Curtin University of Technology
6. Deakin University
7. Edith Cowan University
8. Flinders University of South Australia
9. Griffith University
10. James Cook University
11. La Trobe University
12. Macquarie University
13. Monash University
14. Murdoch University
15. Queensland University of Technology
16. Royal Melbourne Institute of Technology
17. Southern Cross University
18. Swinburne University of Technology
19. The Australian National University
20. The University of Adelaide
21. The University of Melbourne
22. The University of New South Wales
23. The University of Newcastle
24. The University of Queensland
25. The University of Sydney
26. The University of Western Australia
27. University of Ballarat
28. University of Canberra
29. University of New England
30. University of South Australia
31. University of Tasmania
32. University of Technology, Sydney
33. University of the Sunshine Coast
34. University of Western Sydney
35. University of Wollongong
36. University Southern Queensland
37. Victoria University

Table B providers under the *Higher Education Support Act 2003* (Cth)

38. Bond University
39. The University of Notre Dame Australia

Appendix 4 – Legal Background Materials

A. Relevant state and territory courts and tribunals

Commonwealth

- (a) Human Rights and Equal Opportunity Commission
- (b) Federal Magistrates Court of Australia
- (c) Federal Court of Australia
- (d) High Court of Australia
- (e) Commonwealth Minister for Education
- (f) Administrative Appeals Tribunal

Australian Capital Territory

- (a) Supreme Court of the Australian Capital Territory
- (b) Discrimination Tribunal of the Australian Capital Territory
- (c) Administrative Appeals Tribunal of the Australian Capital Territory

New South Wales

- (a) NSW Anti-Discrimination Board
- (b) Administrative Decisions Tribunal of New South Wales (including Appeal Panel)
- (c) Supreme Court of New South Wales (including Court of Appeal)
- (d) Consumer Trader and Tenancy Tribunal
- (e) District Court of New South Wales
- (f) NSW Privacy Commissioner

Victoria

- (a) Victorian Equal Opportunity and Human Rights Commission
- (b) Victorian Civil and Administrative Tribunal
- (c) Supreme Court of Victoria (including Court of Appeal)
- (d) Victorian Privacy Commissioner

Tasmania

- (a) Anti-Discrimination Tribunal of Tasmania
- (b) Tasmanian Administrative Decisions Tribunal

South Australia

- (a) Supreme Court of South Australia (including Court of Appeal)
- (b) Equal Opportunity Commission of South Australia

Western Australia

- (a) Supreme Court of Western Australia (including Court of Appeal)
- (b) Western Australian Information Commissioner

Northern Territory

- (a) Supreme Court of the Northern Territory
- (b) Northern Territory Anti-Discrimination Commission

Queensland

- (a) Supreme Court of Queensland (including Court of Appeal)
- (b) Anti-Discrimination Tribunal of Queensland
- (c) Queensland Information Commissioner

B. The legal basis of student complaints to external judicial bodies

- (a) Breach of statute (e.g., anti-discrimination laws, trade practices and fair trading laws)
- (b) Negligence
- (c) Defamation
- (d) Injurious falsehood
- (e) Conspiracy
- (f) Deceit
- (g) Assault
- (h) Undue influence
- (i) Breach of contract
- (j) Judicial Review (e.g., failure to accord procedural fairness)

C. Potential statutory sources of complaints

Set out below is a list of statutes (excluding university acts and regulations) which may provide a statutory source of complaint from a student against a university. In some cases, a student may not have a direct cause of action or remedy under a particular statute, but breach of an act (or regulations under it) may nevertheless be the source of a complaint which may still have consequences for the university involved. An example of this is breach of the *Higher Education Guidelines* which are made under section 238-10 of the *Higher Education Support Act 2003*.

Commonwealth

- (a) Administrative Decisions Judicial Review Act 1977 (Cth)
- (b) Age Discrimination Act 2004 (Cth)
- (c) Commonwealth Disability Standards for Education 2005 (Cth)
- (d) Disability Discrimination Act 1992 (Cth)
- (e) Education Services for Overseas Students Act 2000 (Cth) (including National Code 2007)
- (f) Educational Services for Overseas Students Act 2000 (Cth)
- (g) Freedom of Information Act 1982 (Cth)
- (h) Higher Education Support Act 2003 (Cth)
- (i) *Privacy Act 1988* (Cth)
- (j) Racial Discrimination Act 1975 (Cth)
- (k) Sex Discrimination Act 1984 (Cth)
- (l) Trade Practices Act 1974 (Cth)

Australian Capital Territory

- (a) Discrimination Act 1991 (ACT)
- (b) Fair Trading (Consumer Affairs) Act 1973

New South Wales

- (a) Anti-Discrimination Act 1977 (NSW)
- (b) Consumer Claims Act 1998 (NSW)
- (c) Fair Trading Act 1987 (NSW)
- (d) Freedom of Information Act 1989 (NSW)
- (e) Higher Education Act 2001 (NSW)
- (f) Privacy and Personal Information Protection Act 1998 (NSW)

Victoria

- (a) Education Training & Reform Act 2006 (Vic)
- (b) Equal Opportunity Act 1995 (Vic)
- (c) Fair Trading Act 1999 (Vic)
- (d) Freedom of Information Act 1982 (Vic)
- (e) Racial and Religious Tolerance Act 2001 (Vic)

Tasmania

- (a) Anti-Discrimination Act, 1998 (Tas)
- (b) Freedom of Information Act, 1991 (Tas)
- (c) Fair Trading Act 1990 (Tas)

South Australia

- (a) Equal Opportunity Act 1984 (SA)

Western Australia

- (a) Education Service Providers (Full Fee Overseas Students) Registration Act 1991 (WA)
- (b) Equal Opportunity Act 1994 (WA)
- (c) Freedom of Information Act 1992 (WA)
- (d) Higher Education Act 2004 (WA)

Northern Territory

- (a) Anti-Discrimination Act 1992 (NT)
- (b) Higher Education Act (2004) (NT)

Queensland

- (a) Anti-Discrimination Act 1991 (Qld)
- (b) Judicial Review Act 1991 (Qld)
- (c) Higher Education (General Provisions) Act 2003 (Qld)
- (d) Higher Education (General Provisions) Act 2008 (Qld)

Appendix 5 – Survey and Interview Instruments

Student Survey Questions

Student Survey - Student Grievances and Discipline Matters Project

1. ABOUT THIS SURVEY AND THE RESEARCH PROJECT

Dear Student Participant

ABOUT THIS SURVEY

This anonymous, on-line survey is being conducted by Southern Cross University (Professor Jim Jackson and Ms Helen Fleming, Faculty of Law), the University of Technology, Sydney (Dr Sally Varnham, Faculty of Law) and the University of Sydney (Ms Patty Kamvounias, Faculty of Economics & Business).

The aim of the project is to identify, scope and review the mechanisms and processes of Australian universities for dealing with student complaints and misconduct matters.

The research team would like to hear from University students who have had a problem or complaint about their university (whether they reported it or not) or have at some stage been accused of misconduct.

Your participation in this survey is important to us as it sheds light on student perceptions of the effectiveness and fairness of university processes.

LENGTH OF THIS SURVEY

Thank you for taking the time to complete this survey.

We estimate that it will take you approximately 10 minutes to complete this survey. If you prefer, you can download a copy first.

PUBLICATION OF RESULTS OF SURVEY

The results of this survey will be made available at www.altc.edu.au. If you wish us to notify you when the results of the survey are available, please send an email to Helen.Fleming@scu.edu.au.

QUESTIONS ABOUT THIS SURVEY

Please direct any questions about this survey to Helen Fleming, Project Manager, at Helen.Fleming@scu.edu.au or telephone (02) 9514 9665.

PLEASE READ THIS EXPLANATORY STATEMENT BEFORE YOU PROCEED ANY FURTHER

* None of the data used in this survey will be used partly, wholly or mainly to satisfy the requirements of an academic qualification.

* This survey is anonymous. We do not ask you to supply any personal information that could identify you as an individual, either to your university or more generally.

* The data from this survey will only be used by the researchers for the purposes of this research project.

* Your decision to do this survey is entirely voluntary. You may withdraw from the survey at any stage by simply exiting. There are no consequences for you if you do so.

* You may tell other people about this study if you wish to do so.

IF YOU HAVE ANY CONCERNS ABOUT THE ETHICAL CONDUCT OF THIS SURVEY, PLEASE WRITE TO:

HREC Complaints Officer
Southern Cross University
P O Box 157
LISMORE NSW 2480

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Student Survey Questions (cont)

Student Survey - Student Grievances and Discipline Matters Project

Email sue.kelly@scu.edu.au

and quote HREC approval no ECN-08-006

If you are a student or staff member of the University of Technology, Sydney and have any complaints or concerns about the ethical conduct of this research which is referable to the University of Technology, Sydney, please write to:

Manager, Research Ethics
University of Technology, Sydney
P O Box 123
BROADWAY NSW 2007

Telephone (02) 9514 1279
Facsimile (02) 9514 1244
Email susanna.gorman@uts.edu.au

and quote HREC approval no 2008-84R

If you are a member of the University of Sydney and have any complaints or concerns about the ethical conduct of this research which is referable to the University of Sydney, please write to:

Senior Ethics Officer, Ethics Administration
The University of Sydney NSW 2006
Telephone (02) 9351 4811
Facsimile (02) 951 6706
Email gbriody@mail.usyd.edu.au

and quote HREC approval no 05-2008/10788

1. FORM OF CONSENT

By clicking on "I agree" below, I confirm that:

- * I am over the age of 18 years
- * I have not done this survey before
- * I have read the explanatory statement above
- * Any questions I have about this survey have been answered to my satisfaction

☐ I agree

☐ I do not agree

2. PRELIMINARY

This section asks you some preliminary questions about your student profile and the nature of your complaint (even if you ultimately did not pursue it) or allegation of misconduct in which you were involved.

PLEASE NOTE THAT NONE OF THE QUESTIONS WILL IDENTIFY YOU AS AN INDIVIDUAL BECAUSE THIS IS AN ANONYMOUS SURVEY

2. What is your gender?

☐ Male

☐ Female

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Student Survey Questions (cont)

Student Survey - Student Grievances and Discipline Matters Project

3. Is English your first language?

☐ Yes

☐ No

4. At the time you had a problem or complaint, or were told about an allegation of misconduct about you, were you (tick as many boxes as apply):

☐ A local student

☐ An international student

☐ An undergraduate student

☐ A postgraduate student

☐ A higher degree student

☐ A mature age student

5. How old were you?

☐ 18-21

☐ 22-25

☐ 25-30

☐ over 30

6. Did any of the following people assist or support you with your problem or complaint, or with the allegation of misconduct, at any stage?

	Yes	No
Relative/friend	☐	☐
Student ombudsman	☐	☐
Dean of Students	☐	☐
Student services staff member (eg, EEO, disability services officer)	☐	☐
Staff member in your faculty or school	☐	☐
University counselling/medical service	☐	☐
Non-university counselling/medical service	☐	☐
Student association (eg, student advocate, welfare officer)	☐	☐
Lawyer	☐	☐
Other	☐	☐

Page 3

Student Survey Questions (cont)

Student Survey - Student Grievances and Discipline Matters Project

7. How did your complaint or the allegation against you first arise?

- ☐ I was unhappy with my university about something or needed assistance with a problem
- ☐ The university raised a problem with me about my studies or my behaviour
- ☐ Both of these

3. REPORTING YOUR COMPLAINT

You have been directed to this section because you indicated that you had a complaint against your university

This section deals with whether you reported your complaint and, if not, the reasons why.

8. Did you approach someone in the university for help with your problem or complaint?

- ☐ Yes
- ☐ No

9. If your answer to the previous question is no, why not? (tick as many answers as appropriate)

- ☐ Didn't feel problem important enough to report
- ☐ Solved problem by myself
- ☐ Didn't know how to make a complaint
- ☐ Didn't know who to complain to
- ☐ Didn't think my complaint would be taken seriously
- ☐ Was afraid this would affect my progress through my course
- ☐ Didn't want to cause a fuss or "make waves"
- ☐ Other [please specify below]

Other (specified)

4. COMPLAINTS MADE BY YOU AGAINST YOUR UNIVERSITY

You have come to this section because you indicated earlier that you complained to your university about a problem.

We want to ask you some questions about what your complaint was about and how it was handled by the university.

PLEASE NOTE THERE ARE NO QUESTIONS THAT WILL IDENTIFY YOU AS AN INDIVIDUAL

Student Survey Questions (cont)

Student Survey - Student Grievances and Discipline Matters Project

10. What was your problem or complaint about? (tick as many boxes as applicable)

- ☐ Assessment for exam, thesis, assignment or field work
- ☐ End of year/semester/term grade for a subject
- ☐ Honours grade
- ☐ Inadequate or poor quality teaching
- ☐ Inadequate supervision by supervisor
- ☐ Course fees
- ☐ Discrimination or harassment by staff member or other student
- ☐ Inadequate or poor quality student services or facilities
- ☐ Other (please specify)

11. If you felt your problem or complaint involved discrimination against you, what type was it (tick as many boxes as appropriate)?

- ☐ Age
- ☐ Disability
- ☐ Family responsibilities
- ☐ Gender
- ☐ Marital status
- ☐ Politics
- ☐ Pregnancy
- ☐ Race or culture
- ☐ Religion
- ☐ Sexuality
- ☐ Other (please specify)

12. Who in the university did you first tell about your problem or complaint?

- ☐ Staff member in my faculty or school
- ☐ Student ombuds/grievance officer
- ☐ Student services/welfare officer
- ☐ University equal opportunity unit
- ☐ Student association
- ☐ Someone external to the university (eg, ombudsman, anti-discrimination board or HREOC, court, tribunal)
- ☐ Other (please specify)

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Student Survey Questions (cont)

Student Survey - Student Grievances and Discipline Matters Project

13. Please answer the following questions about mediation:

WHAT'S MEDIATION? Essentially, it means a third person acts as an impartial "go-between" and tries to help people in dispute to resolve their differences. It is usually an informal process.

	Yes	No	Not applicable
The university offered mediation to try to resolve my problem/complaint	☐	☐	☐
I used the university's mediation process	☐	☐	☐
My problem/complaint was resolved after mediation	☐	☐	☐

14. Has your problem or complaint now been resolved?

- ☐ Yes (if you tick this one, please go to Q15)
- ☐ No, it is still continuing (if you click this one please then click "next" at the bottom of this page)
- ☐ No, I gave up (if you click this one, please click "next" at the bottom of this page)

15. How long did your problem or complaint take to resolve after you raised it with the first person you spoke to?

- ☐ Less than 1 month
- ☐ Between 1 and 3 months
- ☐ Between 3 and 6 months
- ☐ More than 6 months

16. If your problem or complaint has now been resolved, how was it finally resolved?

- ☐ Through speaking informally to one or more people
- ☐ Through mediation offered by the university
- ☐ Through a formal complaint or appeal process in the university
- ☐ Through a formal complaint or appeal process outside the university (eg. court, tribunal, ombudsman)

5. ALLEGATIONS OF MISCONDUCT AGAINST YOU

You have come to this section because you have told us an allegation of misconduct was made against you earlier in this survey.

This section asks you questions about the process.

YOU WILL NOT BE ASKED ANY QUESTIONS THAT COULD IDENTIFY YOU PERSONALLY

Student Survey Questions (cont)

Student Survey - Student Grievances and Discipline Matters Project

17. What was the accusation against you?

- ☐ Copying another student's work in an assignment
- ☐ Copying another student's work in an exam
- ☐ Sitting an exam for someone else
- ☐ Having someone else sit my exam for me
- ☐ Using someone else's work (eg, off the internet) and not attributing it properly
- ☐ My behaviour towards another person (eg, harassing, bullying)
- ☐ Other (please specify)

18. What happened after you were first told about the accusation made against you?

- ☐ I spoke to a staff member and nothing further happened
- ☐ I spoke to a staff member who gave me a warning or counselling
- ☐ There was a formal investigation
- ☐ Other (please specify)

19. If there was a formal investigation, what happened when it was completed?

- ☐ The allegation was dismissed
- ☐ I was found guilty of misconduct, but no penalty was imposed
- ☐ I was found guilty of misconduct, and was given a penalty

20. Did you appeal that decision?

- ☐ Yes
- ☐ No (if you click this one, please go to Q24)
- ☐ Haven't decided (if you click this one, please go to Q24)

21. If you appealed the decision, what did you appeal against?

- ☐ The finding that I was guilty of misconduct
- ☐ The penalty given to me
- ☐ Both

22. If you appealed, what avenue(s) of appeal did you go through (tick as many boxes as apply)

- ☐ I used my university's internal appeal processes
- ☐ I appealed to a state or territory ombudsman
- ☐ I appealed to a court or tribunal

Student Survey Questions (cont)

Student Survey - Student Grievances and Discipline Matters Project

23. If you appealed (even if more than once), what was the final result (tick as many boxes as appropriate)?

- ☐ The finding of misconduct was upheld
- ☐ The finding of misconduct was overturned
- ☐ The penalty was upheld
- ☐ The penalty was overturned, reduced or changed
- ☐ No final result yet

24. Did you also make a complaint of your own (other than an appeal) as a result of this allegation of misconduct?

- ☐ Yes
- ☐ No

6. IMPACT ON YOUR STUDIES

In this section, we ask you what has happened with your studies since you made the complaint or were the subject of an allegation of misconduct

25. Since you raised your problem or complaint, or were told about an allegation of misconduct against you, what has happened with your study program? Please tick as appropriate

- ☐ I am continuing with my course and intend to complete it
- ☐ I am presently excluded or suspended
- ☐ I have been expelled
- ☐ I withdrew from my course and don't intend to re-enrol in it
- ☐ I withdrew from my course, but intend to do it again
- ☐ I withdrew from my course and haven't decided whether to re-enrol in it
- ☐ I have since completed my course
- ☐ I deferred my enrolment and haven't decided what to do yet
- ☐ I deferred my enrolment but have now resumed or intend to do so
- ☐ I transferred to another course or degree at the same university
- ☐ I moved to another university
- ☐ I left university without completing my course and don't intend to do any more study
- ☐ Other (please specify)

7. HOW YOU RATE YOUR UNIVERSITY'S PROCESSES AND SUPPORT SERVICES

This is the last section!

We want to find out how you rate your university's processes and the support services available through your university or your student association

Student Survey Questions (cont)

Student Survey - Student Grievances and Discipline Matters Project

26. Please indicate how strongly you agree or disagree with the following:

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree	N/A
Information about policy and procedures was easily accessible	☐	☐	☐	☐	☐	☐
Information about policy and procedures was easy to understand	☐	☐	☐	☐	☐	☐
I was kept informed about progress at all times	☐	☐	☐	☐	☐	☐
University staff dealing with complaint/allegation of misconduct were fair and impartial	☐	☐	☐	☐	☐	☐
The complaint/allegation of misconduct was dealt with in a reasonable time	☐	☐	☐	☐	☐	☐
University support services (eg, disability, EEO) were helpful to me	☐	☐	☐	☐	☐	☐
University counselling/medical services were helpful to me	☐	☐	☐	☐	☐	☐
Student association was helpful to me	☐	☐	☐	☐	☐	☐
Mediation was helpful in trying to resolve my complaint	☐	☐	☐	☐	☐	☐
Mediation should be available to try and resolve complaints by students	☐	☐	☐	☐	☐	☐

8. THANK YOU!

Thank you for taking the time to complete this survey. We know that your time is valuable and appreciate your contribution to this important research project.

If you are also interested in being interviewed by our research team about your experiences, please email Helen Fleming at helen.fleming@scu.edu.au and she will contact you to discuss. All queries will be treated in confidence.

Student Interview Questions

Student Interview Questions - Student Grievances & Discipline

1. ABOUT THIS INTERVIEW

The following questions are interview questions for students who first give their consent to be interviewed.

While the questions require specific answers to enable data to be analysed, there is a general text or comment box at the end of each section and in the last section to enable interviewees to offer other comments, perceptions or recommendations

2. PRELIMINARY

This section is designed to get some background about the student at the time the complaint was first made

1. Have you already completed on the on-line student survey?

- ☐ Yes
☐ No

2. At the time of the complaint were you

- ☐ Undergraduate student
☐ Postgraduate student
☐ Post doctoral student
☐ Local student
☐ International student
☐ Study abroad student
☐ Mature age student

3. Your age at the time of the complaint

- ☐ 18-21
☐ 22-25
☐ 25-30
☐ over 30

3. ABOUT THE COMPLAINT OR ALLEGATION

This section deals with the complaint involving the student interviewed. It may be a complaint made by them, or a complaint (such as an allegation of misconduct) made against them.

Student Interview Questions (cont)

Student Interview Questions - Student Grievances & Discipline

4. What was the complaint(s) about?

- ☐ Quality of teaching/supervision
- ☐ Course content or delivery
- ☐ Fees
- ☐ Delivery of facilities/services
- ☐ Unhappy with grades
- ☐ Excluded for lack of academic progress
- ☐ Denial of advanced standing
- ☐ Denial of special consideration
- ☐ Discrimination
- ☐ Bullying or harassment
- ☐ Accused of academic misconduct
- ☐ Accused of non-academic misconduct
- ☐ Other (please specify)

5. If there was more than one complaint please specify:

	Not applicable	Yes	No
Did one complaint arise following another?	☐	☐	☐
Did you make a complaint after an allegation was made against you?	☐	☐	☐
Was an allegation made against you after you made a complaint?	☐	☐	☐

6. Who in the university did you first approach about your complaint?

- ☐ I didn't pursue the complaint
- ☐ Lecturer or course coordinator
- ☐ Faculty/school/department staff
- ☐ EEO officer
- ☐ Student services officer (eg, disability)
- ☐ Student ombudsman
- ☐ Other (please specify)

Student Interview Questions (cont)

Student Interview Questions - Student Grievances & Discipline

7. If you didn't pursue the complaint, why not?

- ☐ Didn't feel it important enough to pursue
- ☐ Solved it by myself
- ☐ Didn't know how to make a complaint
- ☐ Didn't know who to complain to
- ☐ Didn't think my complaint would be taken seriously
- ☐ Was concerned this would affect my progress in the course
- ☐ Didn't want to cause a fuss or "make waves"
- ☐ Other (please specify)

8. What happened to the complaint after you reported it

- ☐ It was resolved informally by the first person I spoke to about it
- ☐ It was resolved after I made a written complaint
- ☐ I had to go through a number of university processes before it was resolved
- ☐ I took legal action against the university
- ☐ I complained to another statutory or regulatory body (eg, ombudsman, DEST)
- ☐ Other (please specify)

9. How long did it take to resolve the complaint, from start to finish?

- ☐ Less than 1 month
- ☐ 1 to 3 months
- ☐ 3 to 6 months
- ☐ 6 months to 1 year
- ☐ More than 1 year
- ☐ Still not resolved

10. If the complaint still has not been resolved, how long ago did it arise?

- ☐ Less than 1 month ago
- ☐ 1 to 3 months ago
- ☐ 3 to 6 months ago
- ☐ 6 months to 1 year ago
- ☐ More than 1 year ago

11. Add here any other comments or perceptions offered by interviewee relevant to this section

Student Interview Questions (cont)

Student Interview Questions - Student Grievances & Discipline			
4. UNIVERSITY'S PROCESSES			
12. Before you made your complaint, were you aware if your university had a charter of students' rights and responsibilities?			
☐ Yes ☐ No			
13. If you answered yes to the previous question, did you read and understand it?			
☐ Yes ☐ No			
14. How did you access your university's complaint handling or appeals procedures at the time of the complaint?			
☐ I wasn't aware of them ☐ I was aware of them, but didn't use them ☐ I found them on the university's website ☐ I found them in the student handbook ☐ I found them elsewhere (please specify)			
15. Did you find that the processes and procedures			
	Yes	No	Not sure
Were easily accessible by you	☐	☐	☐
Were easy to read, understand and follow	☐	☐	☐
Helped you to understand what you were required to do	☐	☐	☐
Gave you an idea of what outcome(s) you might expect	☐	☐	☐
Made you feel as though your complaint would be taken seriously	☐	☐	☐
Made you feel as though you would be treated fairly	☐	☐	☐
Were relevant to your type of complaint(s)	☐	☐	☐

Page 4

Student Interview Questions (cont)

Student Interview Questions - Student Grievances & Discipline				
16. What difficulties did you encounter in the way your complaint was handled? [tick as many as relevant]				
☐	Unreasonable delays in dealing with complaint			
☐	Didn't feel complaint treated seriously			
☐	Didn't feel complaint handled fairly			
☐	Little or no support from university staff involved			
☐	Little or no support from student services			
☐	Little or no support from student association			
☐	Other (please specify)			
17. Did the university offer mediation as a way of resolving the complaint?				
☐	Yes			
☐	No			
☐	Not applicable to this type of complaint (eg, an appeal)			
18. If your complaint has now been resolved internally, how would you rate your satisfaction with the following				
	Very satisfied	Somewhat or reasonably satisfied	Not satisfied	Very dissatisfied
Complaint was taken seriously	☐	☐	☐	☐
University staff I dealt with were helpful and fair	☐	☐	☐	☐
Complaint was dealt with fairly	☐	☐	☐	☐
Complaint was resolved in a reasonable time	☐	☐	☐	☐
I was satisfied with the outcome	☐	☐	☐	☐
19. Add here any other comments or perceptions offered by interviewee relevant to this section				
5. COMPLAINING TO EXTERNAL BODIES				
These questions will be asked where the complaint was or is being dealt with by an external body, such as an ombudsman, court or tribunal				

Student Interview Questions (cont)

Student Interview Questions - Student Grievances & Discipline

20. Where did you take your complaint to externally?

- ☐ State or territory ombudsman
- ☐ DEST
- ☐ Court or tribunal
- ☐ Other (please specify)

21. If your complaint has now been resolved, what happened

- ☐ It was resolved through mediation
- ☐ It was resolved through negotiations
- ☐ The ombudsman/DEST/court/tribunal/other found in my favour
- ☐ The ombudsman/DEST/court/tribunal/other found in the university's favour
- ☐ It has still not been resolved
- ☐ Other (please specify)

22. How long did that process take from the time you initiated it?

- ☐ Less than 3 months
- ☐ 3 to 6 months
- ☐ 6 to 12 months
- ☐ More than 12 months
- ☐ Still not resolved

23. Did or do you have a lawyer representing you at that stage?

- ☐ Yes
- ☐ No

24. Were you satisfied with the outcome of that process?

- ☐ Yes
- ☐ No

25. Add here any other comments or perceptions offered by interviewee relevant to this section

6. IMPACT ON STUDENT

These questions are designed to find out what the impact of the handling of the complaint had on the student

Student Interview Questions (cont)

Student Interview Questions - Student Grievances & Discipline
26. What impact did the complaint have on you and your studies? [tick as many as appropriate] ☐ I just continued with my studies throughout ☐ My studies were or are suspended or deferred temporarily ☐ I enrolled or want to enrol in another course ☐ I have moved or want to move to another university ☐ I want to leave university altogether ☐ Other (please specify) 27. Add here any other comments or perceptions offered by interviewee relevant to this section
7. OTHER COMMENTS Free text page to include any other comments, perceptions or recommendations by interviewee 28. Include comments here

Staff Survey Questions

Staff Survey - Student Grievances & Discipline Matters Project

1. ABOUT THIS SURVEY

Dear Participant

ABOUT THIS SURVEY

This anonymous, on-line survey is being conducted by Southern Cross University (Professor Jim Jackson and Ms Helen Fleming, Faculty of Law), the University of Technology, Sydney (Dr Sally Varnham, Faculty of Law) and the University of Sydney (Ms Patty Kamvounias, Faculty of Economics & Business).

The aim of the project is to identify, scope and review the mechanisms and processes of Australian universities for dealing with student complaints and misconduct matters.

The research team would like to hear from academic and general staff who are involved with dealing with complaints from students or matters involving student misconduct allegations.

Your participation in this survey is important to us as it sheds light on staff perceptions of the effectiveness and fairness of those processes.

LENGTH OF THIS SURVEY

Thank you for taking the time to complete this survey.

We estimate that it will take you approximately 10 minutes to complete this survey. If you prefer, you can download a copy first.

PUBLICATION OF RESULTS OF SURVEY

The results of this survey will be made available at www.altc.edu.au. If you wish us to notify you when the results of the survey are available, please email us separately at the email address indicated below.

QUESTIONS ABOUT THIS SURVEY

Please direct any questions about this survey to Helen Fleming, Project Manager, at Helen.Fleming@scu.edu.au or telephone (02) 9514 9665.

PLEASE READ THIS EXPLANATORY STATEMENT BEFORE YOU PROCEED ANY FURTHER

* None of the data used in this survey will be used partly, wholly or mainly to satisfy the requirements of an academic qualification.

* This survey is anonymous. We do not ask you to supply any personal information that could identify you as an individual, either to your university or more generally.

* The data from this survey will only be used by the researchers for the purposes of this research project.

* Your decision to do this survey is entirely voluntary. You may withdraw from the survey at any stage by simply exiting. There are no consequences for you if you do so.

* You may tell other people about this study if you wish to do so.

IF YOU HAVE ANY CONCERNS ABOUT THE ETHICAL CONDUCT OF THIS SURVEY PLEASE WRITE TO:

HREC Complaints Officer
Southern Cross University
P O Box 157
LISMORE NSW 2480
Email sue.kelly@scu.edu.au

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Staff Survey Questions (cont)

Staff Survey - Student Grievances & Discipline Matters Project

and quote HREC approval no ECN-08-006

If you are a student or staff member of the University of Technology, Sydney and have any complaints or concerns about the ethical conduct of this research which is referable to the University of Technology, Sydney, please write to:

Manager, Research Ethics
University of Technology, Sydney
P O Box 123
BROADWAY NSW 2007

Telephone (02) 9514 1279
Facsimile (02) 9514 1244
Email susanna.gorman@uts.edu.au

If you are a student or staff member of the University of Sydney and have any complaints or concerns about the ethical conduct of this research which is referable to the University of Sydney, please write to:

Senior Ethics Officer, Ethics Administration
The University of Sydney NSW 2006
Telephone (02) 9351 4811
Facsimile (02) 951 6706
Email gbriody@mail.usyd.edu.au

and quote HREC approval no 05-2008/10788

*** 1. FORM OF CONSENT**

By clicking on "I agree" below, I confirm that:

- * I am over the age of 18 years
- * I have not done this survey before
- * I have read the explanatory statement above
- * Any questions I have about this survey have been answered to my satisfaction

☐ I agree

☐ I do not agree

2. ABOUT YOUR UNIVERSITY AND YOUR ROLE

This section profiles your university and your role at the university at which you are currently employed

2. My university is (tick as many boxes as apply)

- ☐ Located in a capital city (main campus)
- ☐ Located in a regional area (main campus)
- ☐ Multi campus
- ☐ Research intensive
- ☐ Single campus

Staff Survey Questions (cont)

Staff Survey - Student Grievances & Discipline Matters Project

3. My university falls into this grouping:

- ☐ Group of 8
- ☐ Australian Technology Network
- ☐ Innovating Research Universities Australia
- ☐ New Generation Universities
- ☐ None of these

4. My role at the university is :

- ☐ Dean of students or similar
- ☐ Equal opportunity officer
- ☐ Head of Faculty/Department/School
- ☐ In-house lawyer
- ☐ Student Ombudsman
- ☐ Student Services/ Administration
- ☐ Teacher/supervisor
- ☐ University counselling/ medical service
- ☐ Other (please specify)

5. I have been in this role

- ☐ Less than one year
- ☐ 1 to 2 years
- ☐ 2 to 5 years
- ☐ More than 5 years

6. If you are a student ombud or similar, do you normally assist students at any stage of their complaint, appeal or other problem, or is your role one of last resort?

- ☐ They can approach me at any stage for help
- ☐ I only become involved as a last resort for independent investigations
- ☐ Not applicable

3. TYPES OF COMPLAINTS AND COMPLAINANTS

This section deals with your experience of the types of complaints and students at the university at which you are currently employed

PLEASE NOTE: IN THIS SURVEY, WE USE THE WORD "COMPLAINT" TO MEAN ANY KIND OF PROBLEM OR GRIEVANCE RAISED BY A STUDENT AND, UNLESS THE CONTEXT INDICATES OTHERWISE, TO ALSO MEAN ALLEGATIONS OF MISCONDUCT (BOTH ACADEMIC AND NON-ACADEMIC) AGAINST STUDENTS

Staff Survey Questions (cont)

Staff Survey - Student Grievances & Discipline Matters Project

7. What types of complaints do you deal with routinely in your current role? (Please tick as many as apply)

- ☐ Honours/postgraduate/higher degree supervision
- ☐ Course delivery or content
- ☐ Disputes about fees
- ☐ Refusal of advanced standing
- ☐ Denial of special consideration
- ☐ Exclusions
- ☐ Delivery of services/facilities (including support services)
- ☐ Academic progression (including review of marks and exclusion)
- ☐ Academic misconduct (plagiarism, cheating, etc)
- ☐ Non-academic misconduct (bullying, harassment, theft, etc)
- ☐ Quality of teaching/supervision
- ☐ Complaints of discrimination, bullying, harassment
- ☐ Grievances generally except misconduct or academic appeals
- ☐ Other (please specify)

8. In your experience, are students who make complaints more likely to be:

	More likely	Less likely	No difference	Don't know
Male	☐	☐	☐	☐
Female	☐	☐	☐	☐
International	☐	☐	☐	☐
Local	☐	☐	☐	☐
Study Abroad Program	☐	☐	☐	☐
Undergraduate	☐	☐	☐	☐
Postgraduate	☐	☐	☐	☐
Post doctoral	☐	☐	☐	☐
Mature age	☐	☐	☐	☐

Staff Survey Questions (cont)

Staff Survey - Student Grievances & Discipline Matters Project				
9. In your experience, students who are more likely to become the subject of misconduct allegations are more likely to be:				
	More likely	Less likely	No difference	Don't know
Male	☐	☐	☐	☐
Female	☐	☐	☐	☐
International	☐	☐	☐	☐
Local	☐	☐	☐	☐
Study Abroad Program	☐	☐	☐	☐
Undergraduate	☐	☐	☐	☐
Postgraduate	☐	☐	☐	☐
Post doctoral	☐	☐	☐	☐
Mature age	☐	☐	☐	☐
4. DEALING WITH COMPLAINTS				
This section deals with how complaints are managed within your institution				
10. Does a student have to put a complaint (except an appeal) before you can act on it?				
☐ Always ☐ Never ☐ Depends on type of complaint				
11. In your role, do you have a means to filter out trivial or vexatious complaints at a preliminary stage?				
☐ Yes ☐ No ☐ Only with these types of complaints (please specify) 				
12. Does your university offer mediation as a method of resolving complaints other than appeals?				
☐ Yes ☐ No ☐ Only for these types of complaints (please specify) 				

Staff Survey Questions (cont)

Staff Survey - Student Grievances & Discipline Matters Project

13. In your role, when does a complaint (that is not an appeal) made by a student become "formal"?

- ☐ No distinction between "formal" and "informal"
- ☐ When the student first makes it (even if verbally)
- ☐ When the student first makes it in writing
- ☐ If it cannot be resolved by the student at first instance (with the lecturer etc) and the student pursues it
- ☐ Other (please specify)

14. Does your office (or the university centrally) keep a record of all complaints received?

- ☐ Yes
- ☐ No

15. Does your office (or the University centrally) keep non-identifying statistical data about complaints?

- ☐ Yes
- ☐ No
- ☐ Not sure

16. Please indicate YOUR views (based on your experiences or perceptions) of the university's processes for dealing with complaints IN WHICH YOU ARE INVOLVED IN YOUR CURRENT ROLE

	Strongly agree	Agree	Disagree	Strongly disagree
Processes are fair and impartial to students	☐	☐	☐	☐
Processes are easy for students to find and understand	☐	☐	☐	☐
Processes contain too few procedural stages	☐	☐	☐	☐
Processes contain the right number of procedural stages	☐	☐	☐	☐
Processes contain too many procedural stages	☐	☐	☐	☐
Complaints often take too long to resolve	☐	☐	☐	☐
Students are given adequate advice and assistance about what to expect from the process	☐	☐	☐	☐
Current processes ensure consistent	☐	☐	☐	☐

Staff Survey Questions (cont)

Staff Survey - Student Grievances & Discipline Matters Project				
and fair outcomes				
Staff who investigate or decide complaints are given adequate training	☐	☐	☐	☐
Staff who investigate or decide complaints are given adequate support and assistance	☐	☐	☐	☐
Mediation is a useful tool for resolving complaints	☐	☐	☐	☐
17. On average, how long do cases you deal with take to finalise using your university's internal processes? ☐ Less than 1 month ☐ 1 to 3 months ☐ 3 to 6 months ☐ 6 months to 1 year ☐ Longer than 1 year ☐ Don't know				
18. If cases routinely take longer than 6 months to finalise, why do you think this is (tick as many boxes as apply)? ☐ Complexity of case ☐ University timetables (vacations, examinations, etc) ☐ Insufficient resources of university ☐ Student away ☐ Staff member(s) involved away ☐ Involvement of external bodies (eg, ombudsman, DEST, etc) ☐ Persistence of student ☐ Processes too complex and/or lengthy ☐ Don't know ☐ Other (please specify)				
5. OUTCOMES AND IMPACTS OF COMPLAINTS This section deals with the outcome of complaints and their impact on your university and staff				

Staff Survey Questions (cont)

Staff Survey - Student Grievances & Discipline Matters Project					
19. What proportion of cases in which you have been involved have reached the final stage of your university's internal processes?					
☐ Less than 10%					
☐ 10 to 30%					
☐ 30% to 50%					
☐ More than 50%					
☐ Don't know					
☐ Not applicable to my role					
20. What proportion of cases in which you have been involved become the subject of an external appeal or litigation?					
☐ Less than 10%					
☐ 10 to 30%					
☐ 30% to 50%					
☐ More than 50%					
☐ Don't know					
☐ Not applicable to my role					
21. Please indicate whether you agree or disagree with any of the following statements, based on your perceptions or experiences					
	Strongly agree	Agree	Don't know	Disagree	Strongly disagree
Students expect more of universities than they did 3 years ago	☐	☐	☐	☐	☐
Students complain more readily and persistently now than they did 3 years ago	☐	☐	☐	☐	☐
Most students' complaints are justified	☐	☐	☐	☐	☐
Most students' complaints are trivial or vexatious	☐	☐	☐	☐	☐
Complaints by students often reveal systemic failures in the university's processes	☐	☐	☐	☐	☐
Students generally understand what is expected of them as a student (ie, as independent learners, behaviour, etc)	☐	☐	☐	☐	☐

Staff Survey Questions (cont)

Staff Survey - Student Grievances & Discipline Matters Project			
22. Have the processes which you administer in your role been reviewed in the last three years?			
☐ Yes ☐ No ☐ Don't know			
23. If you answered yes to the previous question, please indicate whether you think those changes have resulted in improvements to:			
PLEASE ANSWER THESE QUESTIONS ONLY AS THEY RELATE TO YOUR AREA OF RESPONSIBILITY - NOT YOUR UNIVERSITY GENERALLY			
	Yes	No	No noticeable difference
Guidance for students on what is expected of them when undertaking university studies	☐	☐	☐
Guidance for staff on their responsibilities towards students	☐	☐	☐
Training for staff in dealing with complaints	☐	☐	☐
How quickly complaints are dealt with	☐	☐	☐
Resources and training available to staff	☐	☐	☐
Consistency across the university in how complaints are managed and resolved	☐	☐	☐
6. STAFF TRAINING			
This section deals with staff training in your area of responsibility			
24. Please indicate if you attended any training for handling complaints as it relates to your current role			
☐ Less than 12 months ago ☐ In the last 1 to 2 years ☐ More than 2 years ago ☐ Never			

Staff Survey Questions (cont)

Staff Survey - Student Grievances & Discipline Matters Project

25. If you have attended training, was that training:

- ☐ Compulsory
☐ Voluntary
☐ Not applicable

26. If you have attended training, please rate the training that you have received:

IF YOU HAVE NOT RECEIVED ANY TRAINING, PLEASE CHOOSE "NOT APPLICABLE"

	Strongly agree	Agree	Disagree	Strongly disagree	Not applicable
The training was relevant to my current role	☐	☐	☐	☐	☐
I was able to apply the training in a practical way	☐	☐	☐	☐	☐
The training has improved my understanding of the university's processes and my responsibilities when administering them	☐	☐	☐	☐	☐

7. THANK YOU!

Thank you for taking the time to complete this survey. We know that your time is valuable and appreciate your contribution to this important research project.

If you would like to be considered for participation in an interview, please send an email to Helen Fleming at Helen.Fleming@scu.edu.au. Your email will be treated confidentially.

Staff Interview Questions

Staff Interview Questions - Student Grievances & Discipline Matters

1. ABOUT THIS INTERVIEW

The following questions are interview questions university staff members involved in dealing with complaints who first given their consent to be interviewed.

While the questions require specific answers to enable data to be analysed, there is a general text or comment box at the end of each section and in the last section to enable interviewees to offer other comments, perceptions or recommendations

2. PRELIMINARY

This section asks some preliminary questions about the staff member's university, the staff member's role and how the university categorises grievances

1. Have you also completed the on-line survey?

- ☐ Yes
☐ No

2. Are your answers specific to your institution?

- ☐ As a whole?
☐ In the specific area in which you are employed?

3. What is your role at your institution?

- ☐ Equal Opportunity
☐ Grievance officer/student ombud/dean of students
☐ Head of faculty/department/school
☐ In-house lawyer
☐ Student services/administration
☐ Other (please specify)

4. How many years have you been in this role?

- ☐ Less than 1 year
☐ 1 to 3 years
☐ 3 to 5 years
☐ More than 5 years

5. Have you acted in this role at another university, or in another role at your current or another university?

- ☐ Yes
☐ No

Staff Interview Questions (cont)

Staff Interview Questions - Student Grievances & Discipline Matters

6. If you answered yes to the previous question, please specify the role and length of time in it

	Not applicable	Less than one year	1 to 3 years	3 to 5 years	More than 5 years
Equal Opportunity	☐	☐	☐	☐	☐
Grievance officer/student ombud/dean of students	☐	☐	☐	☐	☐
Head of faculty/department/school	☐	☐	☐	☐	☐
In-house lawyer	☐	☐	☐	☐	☐
Student services/administration	☐	☐	☐	☐	☐
Other	☐	☐	☐	☐	☐

7. What types of complaints do you routinely deal with in your current role?

	Yes	No	Don't know
Quality of teaching/supervision	☐	☐	☐
Course content or delivery	☐	☐	☐
Fees	☐	☐	☐
Delivery of facilities/services	☐	☐	☐
Academic progression (including review of marks, exclusion)	☐	☐	☐
Academic misconduct (plagiarism, cheating, etc)	☐	☐	☐
Non-academic misconduct (bullying, harassment, theft, etc)	☐	☐	☐
Discrimination, bullying, harassment	☐	☐	☐
Other (please specify below)	☐	☐	☐

Other specified

Staff Interview Questions (cont)

Staff Interview Questions - Student Grievances & Discipline Matters

8. If a complaint falls into more than one category, and there are different processes involved, how does your university handle that? For instance, where a student appeals against his or her exclusion and then subsequently makes a complaint about the lecturer in the subject for which he or she is appealing exclusion?

- ☐ Dealt with under different processes
- ☐ Dealt with under one process
- ☐ Other (specify below)

Other specified

9. Do you sometimes think that there may be circumstances where a particular complaint "falls between the cracks" because it covers a number of categories for which the university has processes?

- ☐ Yes
- ☐ No

10. Add here any other comments or perceptions relevant to this section offered by the interview

3. RECORDING COMPLAINTS

This section asks questions about how complaints are recorded at the staff member's university

11. Does your university keep centralised data about complaints?

- ☐ Yes
- ☐ No
- ☐ Don't know

Staff Interview Questions (cont)

Staff Interview Questions - Student Grievances & Discipline Matters

12. If so, what does it record

	Yes	No	Don't know
Total number of complaints	☐	☐	☐
Types of complaints	☐	☐	☐
Which faculty/department/school they arise	☐	☐	☐
Staff member(s) involved	☐	☐	☐
Age of student	☐	☐	☐
Ethnicity of student	☐	☐	☐
Disability of student	☐	☐	☐
Local, international or study abroad student	☐	☐	☐
Undergraduate or postgraduate student	☐	☐	☐
Other (specify below)	☐	☐	☐

Other specified

13. Of the total number of complaints you have dealt with are most them made

- ☐ By the student personally
☐ Through a student organisation
☐ Through a lawyer
☐ Through another person (eg, a parent)

14. Does your university require complaints or allegations to be made in writing before it will investigate them?

- ☐ Yes
☐ No
☐ Don't know

15. Add here any other comments or perceptions offered by the interviewee relevant to this section

4. PROFILE OF STUDENTS

This section deals with the staff member's perceptions and experiences of students who complain or are the subject of misconduct allegations

Staff Interview Questions (cont)

Staff Interview Questions - Student Grievances & Discipline Matters

16. In your experience, are students who make complaints more likely to be:

- ☐ Male
- ☐ Female
- ☐ International
- ☐ Local
- ☐ Study abroad
- ☐ Undergraduate
- ☐ Postgraduate
- ☐ Post doctoral
- ☐ Mature age
- ☐ No particular characteristic(s)

17. Why do you think this is?

18. In your experience, are students who are the subject of allegations of misconduct more likely to be:

- ☐ Male
- ☐ Female
- ☐ International
- ☐ Local
- ☐ Study Abroad
- ☐ Undergraduate
- ☐ Postgraduate
- ☐ Post doctoral
- ☐ Mature age
- ☐ No particular characteristic(s)

19. Why do you think this is?

20. Would you categorise any of the complainants you have dealt with in your role as falling into category of unreasonable or unreasonably persistent complainers?

- ☐ Yes
- ☐ No
- ☐ Don't know or don't have a view

Staff Interview Questions (cont)

Staff Interview Questions - Student Grievances & Discipline Matters

21. If yes, what proportion of complaints come from these type of complainants?

- ☐ Less than 10%
- ☐ Between 10% and 30%
- ☐ Between 30% and 50%
- ☐ Between 50% and 80%
- ☐ More than 80%

22. Add here any other comments or perceptions offered by the interviewee relevant to this section

5. DEALING WITH COMPLAINTS

This section deals with the staff member's perceptions of complaint handling at their university

23. How many complaints have you dealt with in your role over the last three years (or since you have been in your role if less than 3 years) in these categories?

	None or not applicable	Less than 5	Between 5 and 10	Between 10 and 20	Between 20 and 50	More than 50
Quality of teaching/supervision	☐	☐	☐	☐	☐	☐
Course content or delivery	☐	☐	☐	☐	☐	☐
Fees	☐	☐	☐	☐	☐	☐
Delivery of services/facilities	☐	☐	☐	☐	☐	☐
Academic progression (including review of marks, exclusions, advanced standing, etc)	☐	☐	☐	☐	☐	☐
Academic misconduct (plagiarism, cheating, etc)	☐	☐	☐	☐	☐	☐
Non-academic misconduct (bullying, harassment, etc)	☐	☐	☐	☐	☐	☐
Discrimination, harassment, bullying	☐	☐	☐	☐	☐	☐
Other [please specify below]	☐	☐	☐	☐	☐	☐

Other specified

Staff Interview Questions (cont)

Staff Interview Questions - Student Grievances & Discipline Matters

24. Do you agree with statements that the number of complaints by students against universities has increased over the last 3 to 5 years?

- ☐ Think it has decreased
- ☐ Think it has increased
- ☐ Think it has remained steady
- ☐ Can't say
- ☐ Other (please specify below)

Other specified

25. Do you have experience of students being reluctant to make complaints because

	Yes	No
They don't feel the problem is important enough to report	☐	☐
They solved the problem by themselves	☐	☐
They did not know how to make a complaint	☐	☐
They did not know who to complain to	☐	☐
They didn't think their complaint would be taken seriously	☐	☐
They were afraid this would affect their progress throughout the course	☐	☐
Cultural reluctance to cause a fuss or "make waves"	☐	☐

Staff Interview Questions (cont)

Staff Interview Questions - Student Grievances & Discipline Matters

26. Please rate how strongly you agree or disagree with the following:

Students more readily pursue complaints against universities now because

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree
Students have higher expectations of universities	☐	☐	☐	☐	☐
Students see themselves as consumer of education services	☐	☐	☐	☐	☐
Students have much more at stake and are more persistent	☐	☐	☐	☐	☐
University processes are not conducive to resolving complaints quickly and effectively	☐	☐	☐	☐	☐
Universities do not train their staff to manage complaints quickly and effectively	☐	☐	☐	☐	☐
Universities do not provide enough resources to enable complaints to be managed quickly and effectively	☐	☐	☐	☐	☐

27. Of the total number of complaints you have dealt with in your role, what percentage of these were resolved internally?

- ☐ Less than 20%
- ☐ 20% to 50%
- ☐ 50% to 70%
- ☐ More than 70%

Staff Interview Questions (cont)

Staff Interview Questions - Student Grievances & Discipline Matters

28. For complaints that resolve internally, specify the timeframe that it generally takes to resolve these categories of complaints

	Less than 1 month	1 to 3 months	3 to 6 months	6 to 12 months	More than 12 months
Course quality or content	☐	☐	☐	☐	☐
Fees	☐	☐	☐	☐	☐
Facilities/services delivery	☐	☐	☐	☐	☐
Quality of teaching/supervision	☐	☐	☐	☐	☐
Academic progress (including review of marks, exclusion)	☐	☐	☐	☐	☐
Academic misconduct	☐	☐	☐	☐	☐
Non-academic misconduct	☐	☐	☐	☐	☐
Bullying/harassment/discrimination	☐	☐	☐	☐	☐

29. Do you think that particular types of complaints routinely take longer to resolve than others?

- ☐ Yes
- ☐ No
- ☐ Not sure

30. If yes to the previous question, what types of cases tend to take longer to resolve? [tick as many as apply]

- ☐ Quality of teaching or supervision
- ☐ Course content or delivery
- ☐ Fees
- ☐ Delivery of services/facilities
- ☐ Academic progression (including review of marks, exclusions, advanced standing, etc)
- ☐ Academic misconduct (plagiarism, cheating, etc)
- ☐ Non-academic misconduct (bullying, harassment, etc)
- ☐ Discrimination, bullying, harassment,
- ☐ Other (please specify)

Staff Interview Questions (cont)

Staff Interview Questions - Student Grievances & Discipline Matters

31. If cases routinely take longer than 6 months to finalise, why do you think this is? [tick as many boxes as apply]

- ☐ Complexity of case
- ☐ University timetables (vacations, examinations, etc)
- ☐ Insufficient resources of university
- ☐ Involvement of external bodies (eg, ombudsman, DEST, etc)
- ☐ Persistence of student
- ☐ University processes too prone to complexity and delays
- ☐ Other (please specify)

32. Does your university offer mediation or other form of alternative dispute resolution as a way of trying to resolve student grievances?

- ☐ Yes
- ☐ No
- ☐ Don't know

33. If yes, is your experience that it is a successful tool for resolving complaints?

- ☐ Yes
- ☐ No
- ☐ Not sure
- ☐ Other comment (please specify)

34. If no, do you think mediation or another form of ADR would be beneficial in trying to resolve some complaints?

- ☐ Yes
- ☐ No
- ☐ Do not have a view

35. Add here any other comments or perceptions offered by the interviewee relevant to this section

6. OUTCOMES

This section deals with the staff member's perceptions about the outcomes when complaints are resolved or finalised

Staff Interview Questions (cont)

Staff Interview Questions - Student Grievances & Discipline Matters

36. Of the complaints you have dealt with, what proportion of them end up being dealt with externally (eg, by state ombudsman, court or tribunal)?

- ☐ Less than 10%
- ☐ 10 to 30%
- ☐ 30 to 50%
- ☐ More than 50%

37. Of complaints that have been resolved through external mechanisms how many of these were resolved

	Less than 50%	About 50%	More than 50%
By agreement between the parties (including out of court settlements)?	☐	☐	☐
In favour of your institution?	☐	☐	☐
In favour of the student?	☐	☐	☐

38. Add here any other comments or perceptions offered by the interviewee relevant to this section

7. IMPACT OF COMPLAINTS

The purpose of this section is to obtain staff members' perceptions about the effect of complaints and their ultimate resolution on the university and staff members involved

39. Have you perceived or experienced any of the following at your university with any of the complaints you have been involved with?

	Yes	No
Adverse publicity	☐	☐
Processes are too complex or confusing	☐	☐
Low staff morale	☐	☐
Insufficient resources to properly handle complaints	☐	☐
Confusion among staff about responsibilities	☐	☐
Staff resignations	☐	☐

Staff Interview Questions (cont)

Staff Interview Questions - Student Grievances & Discipline Matters

40. In terms of impact on the student(s) concerned, are you able to indicate what tends to happen to them or their study program

	Less than 10%	10 to 30%	30 to 50%	More than 50%
They continue with or return and complete their studies	☐	☐	☐	☐
They drop out of the course and enrol in another	☐	☐	☐	☐
They defer and return later	☐	☐	☐	☐
They drop out of university altogether or move to another university	☐	☐	☐	☐
Their health or morale suffers badly and their academic performance suffers	☐	☐	☐	☐
Other [please specify]	☐	☐	☐	☐

41. Please rate what you think is the cost to a university (apart from legal costs) if complaints are not resolved quickly and effectively through internal mechanisms

	Always	Usually	Sometimes	Never	Rarely	Never
Staff morale and health suffers badly	☐	☐	☐	☐	☐	☐
Student/staff relationship irreparably damaged	☐	☐	☐	☐	☐	☐
University suffers bad publicity	☐	☐	☐	☐	☐	☐
University attracts attention from statutory or other regulating authorities (eg. Ombudsman, DEST)	☐	☐	☐	☐	☐	☐
Other [please specify]	☐	☐	☐	☐	☐	☐

42. ONLY ASK THIS IF YOU ARE INTERVIEWING A UNIVERSITY LAWYER

Are you able to estimate annual external legal costs the university has incurred for complaints with which you have been involved?

- ☐ Less than \$20,000
☐ \$20,000 to \$100,000
☐ \$100,000 to \$500,000
☐ More than \$500,000

Staff Interview Questions (cont)

Staff Interview Questions - Student Grievances & Discipline Matters

43. ONLY ASK THIS QUESTION IF YOU ARE INTERVIEWING UNIVERSITY LAWYER

Does your university have a policy of requiring departments to pay for legal costs where they are clearly at fault?

- ☐ Yes
☐ No
☐ Not sure

44. Add here any other comments or perceptions offered by the interviewee relevant to this section

8. IMPROVEMENTS

This section deals with staff perceptions of how grievance mechanisms could be improved, including training of staff

45. Has your university reviewed its complaint handling/ misconduct processes in the last 3 years?

- ☐ Yes
☐ No

46. If yes to the previous question, what has improved as a result of that review [tick as many as appropriate]

- ☐ Processes are more user-friendly to students and staff
☐ Resolution of complaints at earlier stage
☐ Processes are fairer and more transparent
☐ Staff receive better training
☐ Better resourcing to handle complaints
☐ Other (please specify)

Staff Interview Questions (cont)

Staff Interview Questions - Student Grievances & Discipline Matters

47. Please indicate whether you agree or disagree with the following

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree
All universities should have a student ombudsman	☐	☐	☐	☐	☐
All universities should centrally record types of complaints and where they come from	☐	☐	☐	☐	☐
My university's processes are comprehensive	☐	☐	☐	☐	☐
My university's processes provide quick and effective ways of resolving complaints	☐	☐	☐	☐	☐
My university's processes are too complex and lengthy	☐	☐	☐	☐	☐
Mediation is useful for resolving many complaints from students (except appeals)	☐	☐	☐	☐	☐
My university provides adequate resources for handling complaints	☐	☐	☐	☐	☐
Staff receive adequate training in handling complaints	☐	☐	☐	☐	☐

48. It has been suggested that there should be a national student ombudsman established. Please rate how strongly you agree or disagree with the following

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree
There should be a national student ombudsman to handle all student complaints and appeals at any stage of the complaint or appeal	☐	☐	☐	☐	☐
There should be a national student ombudsman to handle all complaints and appeals when internal processes exhausted only	☐	☐	☐	☐	☐

Staff Interview Questions (cont)

Staff Interview Questions - Student Grievances & Discipline Matters

49. Add here any other comments or perceptions offered by the interviewee relevant to this section

9. OTHER COMMENTS, PERCEPTIONS, RECOMMENDATIONS

Please enter here any other comments, perceptions or recommendations of staff member. Be careful they do not include any data that identifies them or other staff members, students or their universities

50. Enter any other comments, perceptions or recommendations offered by staff member here

Student Association Interview Questions

Student Association Interview Questions - Student Grievances &

1. ABOUT THIS INTERVIEW

The following questions are interview questions for student association officers (eg, welfare officers) involved in dealing with complaints who first given their consent to be interviewed.

While the questions require specific answers to enable data to be analysed, there is a free text or comment box at the end of each section and in the last section to enable interviewees to make other comments or recommendations

2. PRELIMINARY

This section asks some preliminary questions about the interviewee some questions about the type of complaints they have typically been involved in

1. Describe your role in the student association

- ☐ Elected student member
- ☐ Welfare officer
- ☐ Student Advocate
- ☐ Other (please specify)

2. Name types of complaints have you been involved your role and roughly how many?

	Less than 5	Between 5 and 10	More than 10
Quality of teaching/supervision	☐	☐	☐
Course content or delivery	☐	☐	☐
Fees	☐	☐	☐
Delivery of facilities/services	☐	☐	☐
Academic progression (including review of marks, exclusion)	☐	☐	☐
Academic misconduct (plagiarism, cheating, etc)	☐	☐	☐
Non-academic misconduct (bullying, harassment, theft, etc)	☐	☐	☐
Discrimination, bullying, harassment	☐	☐	☐
Other (please specify below)	☐	☐	☐

Other specified

Page 1

Student Association Interview Questions (cont)

Student Association Interview Questions - Student Grievances &			
3. Add here any other comments or perceptions offered by the interviewee relevant to this section			
3. PROFILE OF STUDENTS			
This section deals with the interviewee's perceptions and experiences of students who complain or are the subject of misconduct allegations			
4. In cases in which you have been involved, which of the following categories do students fit (tick as many boxes as apply)			
	Less than 50%	About 50%	More than 50%
Male	☐	☐	☐
Female	☐	☐	☐
International	☐	☐	☐
Local	☐	☐	☐
Study Abroad Program	☐	☐	☐
Undergraduate	☐	☐	☐
Postgraduate	☐	☐	☐
Post doctoral	☐	☐	☐
Mature age	☐	☐	☐
5. Does the student association keep statistics about complaints by or against students?			
☐ Yes			
☐ No			

Student Association Interview Questions (cont)

Student Association Interview Questions - Student Grievances &			
6. If answer to the previous question is yes, what statistics does it record?			
	Yes	No	Not sure
Gender of student	☐	☐	☐
Age of student	☐	☐	☐
Ethnicity of student	☐	☐	☐
Disability of student	☐	☐	☐
Local or international student	☐	☐	☐
Undergraduate or postgraduate student	☐	☐	☐
Type of complaint	☐	☐	☐
Which faculty, school or department it comes from	☐	☐	☐
Staff member(s) involved	☐	☐	☐
Other data about university or student (please specify below)	☐	☐	☐
Other data specified			
7. Are students who make complaints more likely to be: [tick as many as appropriate]			
☐ Male			
☐ Female			
☐ International			
☐ Local			
☐ Study Abroad Program			
☐ Undergraduate			
☐ Postgraduate			
☐ Post doctoral			
☐ Mature age			
☐ Don't know			

Student Association Interview Questions (cont)

Student Association Interview Questions - Student Grievances &
8. Are students who are the subject of allegations of misconduct more likely to be: [tick as many as appropriate] ☐ Male ☐ Female ☐ International ☐ Local ☐ Study Abroad Program ☐ Undergraduate ☐ Postgraduate ☐ Post doctoral ☐ Mature age ☐ Don't know 9. Would you categorise any of the complainants you have dealt with as falling into category of unreasonable or unreasonably persistent complainers? ☐ Yes ☐ No ☐ Don't know or don't have a view 10. If yes, what proportion of complaints come from these type of complainants in which you have been involved? ☐ Less than 10% ☐ Between 10% and 30% ☐ Between 30% and 50% ☐ Between 50% and 80% ☐ More than 80% 11. Add here any other comments or perceptions offered by the interviewee relevant to this section
4. DEALING WITH COMPLAINTS
This section deals with the interviewee's perceptions of complaint handling at their university

Student Association Interview Questions (cont)

Student Association Interview Questions - Student Grievances &

12. Do you agree with statements that the number of complaints by students against universities has increased over the last 3 to 5 years

- ☐ Think it has increased
- ☐ Think it has decreased
- ☐ Think it has remained steady
- ☐ Can't say
- ☐ Other (please specify)

13. Please rate how strongly you agree or disagree with any of the following:

Students pursue complaints against universities now because they:

	Strongly agree	Agree	Neutral	Disagree	Strongly disagree
Have higher expectations of universities	☐	☐	☐	☐	☐
See themselves as consumers of education services	☐	☐	☐	☐	☐
Have much more at stake	☐	☐	☐	☐	☐

14. Do you have personal experience of a student not reporting a complaint to the university for any of the following reasons?

	Yes	No
Didn't feel problem important enough to report	☐	☐
Solved problem by themselves	☐	☐
Didn't know how to make a complaint	☐	☐
Didn't know who to complain to	☐	☐
Didn't think their complaint would be taken seriously	☐	☐
Was afraid this would affect their progress through the course	☐	☐
Cultural or other reluctance to cause a fuss or 'make waves'	☐	☐

Student Association Interview Questions (cont)

Student Association Interview Questions - Student Grievances &

15. Of the total number of complaints you have dealt with in your role, what percentage of these were resolved internally?

- ☐ Less than 20%
- ☐ 20% to 50%
- ☐ 50% to 70%
- ☐ More than 70%

16. How long on average do cases take to resolve internally?

- ☐ Less than 1 month
- ☐ 1 to 3 months
- ☐ 3 to 6 months
- ☐ 6 months to 1 year
- ☐ Longer than 1 year

17. Do you think particular types of complaints routinely take longer to resolve than others?

- ☐ Yes
- ☐ No
- ☐ Not sure

18. If yes to previous question, what types of cases tend to take longer to resolve? [tick as many as apply]

- ☐ Quality of teaching or supervision
- ☐ Course content or delivery
- ☐ Fees
- ☐ Delivery of services/facilities
- ☐ Academic progression (including review of marks, exclusions, advanced standing, etc)
- ☐ Academic misconduct (plagiarism, cheating, etc)
- ☐ Non-academic misconduct (bullying, harassment, etc)
- ☐ Discrimination, bullying, harassment
- ☐ Other (please specify)

Student Association Interview Questions (cont)

Student Association Interview Questions - Student Grievances &

19. If cases routinely take longer than 6 months to finalise, why do you think this is? (tick as many boxes as apply)?

- ☐ Complexity of case
- ☐ University timetables (vacations, examinations, etc)
- ☐ Insufficient resources of university
- ☐ Involvement of external bodies (eg, ombudsman, DEST, etc)
- ☐ Persistence of student
- ☐ University processes too prone to complexity and delays
- ☐ Other (please specify)

20. Add here any other comments or perceptions offered by the interviewee relevant to this section

5. OUTCOMES

This section deals with the interviewee's perceptions about the outcomes when complaints are resolved or finalised

21. Of students who make complaints or who are the subject of misconduct allegations, please rank what tends to happen to them or their study program

	Less than 10%	10% to 30%	30 to 50%	More than 50%
They continue with or return and complete their course	☐	☐	☐	☐
They drop out of the course and enrol in another	☐	☐	☐	☐
They defer and return later	☐	☐	☐	☐
They drop out of university altogether or move to another university	☐	☐	☐	☐
Their academic performance suffers	☐	☐	☐	☐
Other [please specify below]	☐	☐	☐	☐

Other specified

Student Association Interview Questions (cont)

Student Association Interview Questions - Student Grievances &

22. Please rate what you think is the cost to a university (apart from legal costs) if complaints are not resolved internally

	Always	Usually	Sometimes	Rarely	Never
Staff morale and health suffers badly	☐	☐	☐	☐	☐
University suffers bad publicity	☐	☐	☐	☐	☐
University attracts attention from statutory or other regulating bodies (eg. ombudsman, DEST)	☐	☐	☐	☐	☐
Other [please specify below]	☐	☐	☐	☐	☐

Other specified

[illegible]

23. Add here any other comments or perceptions offered by the interviewee relevant to this section

6. IMPROVEMENTS

This section deals with perceptions of how grievance mechanisms could be improved, including training of staff

Student Association Interview Questions (cont)

Student Association Interview Questions - Student Grievances &					
24. Please rate your agreement with the following [tick as many as apply]					
	Strongly agree	Agree	Neutral	Disagree	Strongly disagree
Universities should have a student ombudsman	☐	☐	☐	☐	☐
Universities should centrally record types of complaints and where they come from	☐	☐	☐	☐	☐
Universities need to deal with complaints more effectively at first instance	☐	☐	☐	☐	☐
Universities need to better train their staff in complaint handling	☐	☐	☐	☐	☐
University policies and procedures for complaints are easy to access and understand	☐	☐	☐	☐	☐
University policies and procedures are mostly comprehensive and designed to deal with a wide range of complaints	☐	☐	☐	☐	☐
University policies are too focussed on complaint categories and have too many processes or stages	☐	☐	☐	☐	☐
25. Add comments here about perceptions from previous question					
26. Do you think many complaints you have dealt with could have been resolved using mediation or another form of alternative dispute resolution as part of a university's internal process?					
☐ Yes ☐ No ☐ Not sure					

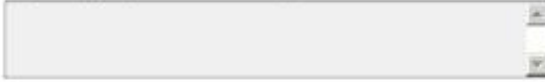
Student Association Interview Questions (cont)

Student Association Interview Questions - Student Grievances &					
27. Do you think mediation or other ADR might work as part of an internal university process in these circumstances?					
	Yes	No	Not sure		
Quality of teaching/supervision	☐	☐	☐		
Course delivery or content	☐	☐	☐		
Disputes about fees	☐	☐	☐		
Disputes about academic decisions (eg, grades, exclusion, special consideration, advanced standing)	☐	☐	☐		
Discrimination, bullying, harassment complaints	☐	☐	☐		
Misconduct allegation (both academic and non-academic)	☐	☐	☐		
28. It has been suggested that there should be a national student ombudsman established. Please rate how strongly you agree or disagree with the following					
	Strongly agree	Agree	Neutral	Disagree	Strongly disagree
There should be a national student ombudsman to handle all student complaints and appeals at any stage of the complaint or appeal	☐	☐	☐	☐	☐
There should be a national student ombudsman to handle all complaints and appeals when internal processes exhausted only	☐	☐	☐	☐	☐
29. Add here any other comments or perceptions offered by the interviewee relevant to this section					
7. OTHER COMMENTS					
Free text page to give opportunity to interviewee to put any other comments, perceptions or recommendations arising from their own experiences. Please do not include data that could identify the interviewee, individual students, staff or universities					

Student Association Interview Questions (cont)

Student Association Interview Questions - Student Grievances &

30. Please specify here any other perceptions, comments or recommendations based on interviewee's experiences. Please do not include any information that could identify individual students, staff or universities



External Interview Questions

External Interview Questions - Student Grievances &

1. ABOUT THIS INTERVIEW

The following questions are interview questions for external people (eg, lawyers, investigators) involved in dealing with complaints who first given their consent to be interviewed.

While the questions require specific answers to enable data to be analysed, there is a general text or comment box in the last section to enable interviewees to make other comments or recommendations

2. PRELIMINARY

This section asks some preliminary questions about the interviewee some questions about the type of complaints they have typically been involved in

1. Describe what your role has been in relation to complaints made by or against universities in relation to students? (tick as many boxes as apply)

- ☐ Lawyer acting for university or student
- ☐ Mediator or other ADR specialist
- ☐ Independent investigator hired by university
- ☐ Educational regulatory body (eg, DEST, AUQA)
- ☐ Statutory body (eg, ombudsman, discrimination commissioner)
- ☐ Court or tribunal member
- ☐ Other (please specify)

External Interview Questions (cont)

External Interview Questions - Student Grievances & ;			
2. Name types of complaints have you been involved in the last 3 to 5 years and roughly how many?			
	Less than 5	Between 5 and 10	More than 10
Quality of teaching/supervision	☐	☐	☐
Course content or delivery	☐	☐	☐
Fees	☐	☐	☐
Delivery of facilities/services	☐	☐	☐
Academic progression (including review of marks, exclusion)	☐	☐	☐
Academic misconduct (plagiarism, cheating, etc)	☐	☐	☐
Non-academic misconduct (bullying, harassment, theft, etc)	☐	☐	☐
Discrimination, bullying, harassment	☐	☐	☐
Other (please specify below)	☐	☐	☐
Other specified 			
3. Add here any other comments or perceptions offered by the interviewee relevant to this section 			
3. PROFILE OF STUDENTS			
This section deals with the interviewee's perceptions and experiences of students who complain or are the subject of misconduct allegations			

External Interview Questions (cont)

External Interview Questions - Student Grievances &

4. Are students who make a complaint more likely to be:

- ☐ Male
- ☐ Female
- ☐ International
- ☐ Local
- ☐ Study Abroad Program
- ☐ Undergraduate
- ☐ Postgraduate
- ☐ Post doctoral
- ☐ Mature age
- ☐ Don't know

5. Are students who are the subject of allegations of misconduct more likely to be:

- ☐ Male
- ☐ Female
- ☐ International
- ☐ Local
- ☐ Study Abroad Program
- ☐ Undergraduate
- ☐ Postgraduate
- ☐ Post doctoral
- ☐ Mature age
- ☐ Don't know

6. Would you categorise any of the complainants you have dealt with as falling into category of unreasonable or unreasonably persistent complainers?

- ☐ Yes
- ☐ No
- ☐ Don't know or don't have a view

7. If yes, what proportion of complaints come from these type of complainants in which you have been involved?

- ☐ Less than 10%
- ☐ Between 10% and 30%
- ☐ Between 30% and 50%
- ☐ Between 50% and 80%
- ☐ More than 80%

External Interview Questions (cont)

External Interview Questions - Student Grievances &

8. Add here any other comments or perceptions offered by the interviewee relevant to this section

4. DEALING WITH COMPLAINTS

This section deals with the interviewee's perceptions of complaint handling at their university

9. Do you agree with statements that student litigation has increased over the last 3 to 5 years

- ☐ Think it has increased
- ☐ Think it has decreased
- ☐ Think it has remained steady
- ☐ Can't say

10. Please rate how strongly you agree or disagree with the following

Students resort more to litigation and other external complaints mechanism nowadays because:

	Strongly agree	Agree	Do not have a view	Disagree	Strongly disagree
Students have higher expectations of universities	☐	☐	☐	☐	☐
Students see themselves as consumers of education services	☐	☐	☐	☐	☐
Students have much more at stake and are more persistent	☐	☐	☐	☐	☐
University processes are not conducive to resolving complaints quickly and effectively	☐	☐	☐	☐	☐
Universities do not train their staff to handle complaints quickly and effectively	☐	☐	☐	☐	☐
Other [please specify below]	☐	☐	☐	☐	☐

Other specified

External Interview Questions (cont)

External Interview Questions - Student Grievances &

11. Do you think particular types of complaints routinely take longer to resolve than others?

- ☐ Yes
☐ No
☐ Not sure

12. If yes to the previous question, what types of cases tend to take longer to resolve? [tick as many as apply]

- ☐ Quality of teaching or supervision
☐ Course content or delivery
☐ Fees
☐ Delivery of services/facilities
☐ Academic progression (including review of marks, exclusion, advanced standing, etc)
☐ Academic misconduct (plagiarism, cheating in exams, etc)
☐ Non-academic misconduct (bullying, harassment, etc)
☐ Discrimination, bullying, harassment
☐ Other (please specify)

13. Why do you think this is? [tick as many as apply]

- ☐ Type or complexity of case
☐ Insufficient resources at university
☐ Timetabling
☐ Staff and student vacations
☐ Involvement of external bodies (eg, ombudsman)
☐ Processes too cumbersome
☐ Other (please specify)

14. Add here any other comments or perceptions offered by the interviewee relevant to this section

5. OUTCOMES

This section deals with the interviewee's perceptions about the outcomes when complaints are resolved or finalised

External Interview Questions (cont)

External Interview Questions - Student Grievances &					
15. Of those complaints you have been involved in, how many were resolved:					
	Less than 50%	About 50%	More than 50%		
Using internal university complaints or appeals mechanisms	☐	☐	☐		
Using external university complaints or appeals mechanisms	☐	☐	☐		
16. When external mechanisms are used, do they tend to resolve:					
☐ Mostly in favour of the university					
☐ Mostly in favour of the student					
☐ About 50/50					
☐ Tend to resolve mostly in out of court settlements					
17. Add any additional text here to answer to previous question					
18. Please rate what you think is the cost to a university (apart from legal costs) if complaints are not resolved internally					
	Always	Usually	Sometimes	Rarely	Never
Staff morale and health suffers badly	☐	☐	☐	☐	☐
The student's health and progress suffers badly	☐	☐	☐	☐	☐
University suffers bad publicity	☐	☐	☐	☐	☐
University attracts attention from statutory or other regulating bodies (eg. ombudsman, DEST)	☐	☐	☐	☐	☐
Other [please specify below]	☐	☐	☐	☐	☐
Other specified					
19. Add here any other comments or perceptions offered by the interviewee relevant to this section					
6. IMPROVEMENTS					
This section deals with perceptions of how grievance mechanisms could be improved, including training of staff					

External Interview Questions (cont)

External Interview Questions - Student Grievances & ;					
20. Please rate your agreement with the following [tick as many as apply]					
	Strongly agree	Agree	Neutral	Disagree	Strongly disagree
Universities should have a student ombudsman	☐	☐	☐	☐	☐
Universities should centrally record types of complaints and where they come from	☐	☐	☐	☐	☐
Universities need to deal with complaints more effectively at first instance	☐	☐	☐	☐	☐
Universities need to better train their staff in complaint handling	☐	☐	☐	☐	☐
University policies and procedures for complaints are easy to access and understand	☐	☐	☐	☐	☐
University policies and procedures are mostly comprehensive and designed to deal with a wide range of complaints	☐	☐	☐	☐	☐
University policies are too focussed on complaint categories and have too many processes or stages	☐	☐	☐	☐	☐
21. Add comments here about perceptions from previous question					
22. Do you think many complaints you have dealt with could have been resolved using mediation or another form of alternative dispute resolution as part of a university's internal process?					
☐ Yes ☐ No ☐ Not sure					

External Interview Questions (cont)

External Interview Questions - Student Grievances &					
23. Do you think mediation or other ADR might work as part of an internal university process in these circumstances?					
	Yes	No	Not sure		
Quality of teaching/supervision	☐	☐	☐		
Course delivery or content	☐	☐	☐		
Disputes about fees	☐	☐	☐		
Disputes about academic decisions (eg, grades, exclusion, special consideration, advanced standing)	☐	☐	☐		
Discrimination, bullying, harassment complaints	☐	☐	☐		
Misconduct allegations (both academic and non academic)	☐	☐	☐		
24. It has been suggested that there should be a national student ombudsman established. Please rate how strongly you agree or disagree with the following					
	Strongly agree	Agree	Neutral	Disagree	Strongly disagree
There should be a national student ombudsman to handle all student complaints and appeals at any stage of the complaint or appeal	☐	☐	☐	☐	☐
There should be a national student ombudsman to handle all complaints and appeals when internal processes are exhausted only	☐	☐	☐	☐	☐
25. Add here any other comments or perceptions offered by the interviewee relevant to this section					
7. OTHER COMMENTS					
Free text page to give opportunity to interviewee to put any other comments, perceptions or recommendations arising from their own experiences					

External Interview Questions (cont)

External Interview Questions - Student Grievances &

26. Add free text here. Please do not include any information that could identify individual students, staff or universities



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