

Chapter 11

Public Sector Ombudsmen and Higher Education

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I Introduction

Complaints about the conduct of universities can find their way into courts and tribunals.¹ Alternatively, complainants may have the option of bringing their concerns to the attention of the relevant Commonwealth, State or Territory Ombudsman. Although extensively regulated by the Commonwealth, public universities also fall within the jurisdiction of one of the nine parliamentary ombudsmen in Australia. An independent ombudsman is also available to overseas students with complaints about private higher education providers.

This chapter deals with the jurisdiction of parliamentary ombudsmen and their role in relation to higher education and includes an analysis of how ombudsmen deal with complaints about the sector. The chapter also includes a discussion of comparable developments in other jurisdictions and whether there is a need for a national university ombudsman in Australia.

II Background and Jurisdictional Issues

A *Jurisdiction of Parliamentary Ombudsmen in Relation to Universities*

With its origins in Sweden in 1809² and first introduced into Australia in the 1970s, the role of the parliamentary ombudsman's office has expanded and evolved and now includes ensuring 'that powers of whatever agencies specified to be within jurisdiction are exercised in a way that produces responsible, fair and reasonable outcomes'.³

1 See Hilary Astor, 'Australian Universities in Court: Causes, Costs and Consequences of Increasing Litigation' (2008) 19 *Australasian Dispute Resolution Journal* 156; Patty Kamvounias and Sally Varnham, 'Legal Challenges to University Decisions Affecting Students' (2010) 34(1) *Melbourne University Law Review* 140.

2 See Swedish Parliamentary Ombudsmen website <<http://www.jo.se/en/About-JO/History/>>.

3 Bruce Barbour, 'The Ombudsman and the Rule of Law' (2005) 44 *Australian Institute of Administrative Law Forum* 17, 18-22. See also Anita Stuhmcke, 'The Evolution of the Classical Ombudsman: A View from the Antipodes' (2012) 2(1) *International Journal of Public Law and Policy* 83.

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