

## **Submission on external advocacy providers offering services to Monash University students**

**Monash Postgraduate Association Inc.**

**March 2019**

### **Background**

Monash University has obligations to its students under various legislation.<sup>1</sup> The University is permitted to collect an amenities fee (“SSAF”) from its students and in distributing the funds must do so for the benefit of students. Section 19.38(4) of HESA lists allowable purposes for which the funds may be used. The provision of legal services to students is a permitted purpose<sup>2</sup> as is “...advocating students' interests in matters arising under the higher education provider's (“HEPs”) rules (however described)”.<sup>3</sup>

It is mandatory that all higher education providers, including Monash University, comply with the special requirements set out in the Student Services, Amenities, Representation and Advocacy Guidelines. (“SSAF guidelines”)<sup>4</sup> Guideline 2.2.2(c) provides that Monash University (all HEPs) “... must ensure that all students enrolled... are provided with information on how to access:...advocacy services.”

The Monash Postgraduate Association Inc (“the MPA”) is a recognised association under Part 9 of the *Monash University (Council) Regulations* and is the designated body to provide advice and advocacy for all postgraduate students enrolled through the Australian campuses of Monash University. In order to fulfil its legislative obligations Monash University enters into Funding Agreement(s) (“FA”) with the MPA. The basis of the FA is an agreed and a legally compliant framework for expenditure by the University for the MPA to provide (among other services) an advocacy service.<sup>5</sup>

### **Submissions**

It has come to the attention of the MPA that external providers purporting to advocate on behalf of Monash University students are dealing directly with the University in matters including internal complaints and challenges to the University admission rules and ESOS protocols. The

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1 Higher Education Support Act 2003 (“HESA”), Tertiary Education Quality and Standards Agency Act 2011 (TEQSA”), Monash University Act 2009, Student Services, Amenities, Representation and Advocacy Guidelines, Education Services for Overseas Students Act 2000 (“ESOS”)

2 Section 19.38 (4)(e) HESA

3 Section 19.38 (4) (q) HESA

4 Section 19.67 of HESA. The Student Services, Amenities, Representation and Advocacy Guidelines are made by the Minister under section 238-10 of HESA

5 As per section 19.38(4) HESA examples (b) & (c)

MPA does not have any details of specific providers or the extent of their operations. The MPA is extremely concerned with this trend, for the reasons outlined below:

1. **Exploitation of students** - By recognising the purported external advocates, Monash University is legitimising their operation within and outside of Monash. The MPA has long been aware of the vulnerable position of international students and their susceptibility to exploitation by unscrupulous agents, a good example being in the migration sphere. Dealing with random providers purporting to provide advocacy for students may be a breach of the duty-of-care Monash University owes to all its students under ESOS legislation.<sup>6</sup>
2. **Lack of regulation** - There appears to be no regulatory body for external advocacy providers, be they 'back-yard' operators or otherwise, who likely ask for substantial payments from students who can ill afford this expense. They do not operate within the Monash framework. They are not accountable in the event they provide negligent advice and there is no redress other than legal proceedings available to the students paying for their services. A student on the receiving end of bad advice or shoddy work is not likely to be able to afford to institute legal proceedings to recover money or seek compensation.

The MPA advocacy service is free, confidential and independent of the University. The MPA strives to provide the highest level of service and support to over 27,000 constituents. There is a built-in accountability for the MPA to act with due care, skill, and diligence. Any failure of the MPA to act in the best interests of its constituents would risk its de-registration under Monash University regulations.

3. **Failure to properly inform students** - If the University knowingly allows students to be represented by anyone other than the MPA (or external legal practitioners) it risks litigation on the basis that there was a failure to refer students to their recognised representative body. The MPA is an incorporated association subject to the regulatory framework of the Associations Incorporation Reform Act and all internal University rules, regulations and policies.
4. **Breach of Funding Agreement** - The FA between Monash University and the MPA provides:

Section 4.2 states:

*The University affirms that student advocacy services should be primarily provided by student representative bodies like MSO (sic) and that the student representative bodies like MSOs are also the primary provider of student activities and Clubs and Societies.*

The MPA is concerned that a recognition by Monash University of external and unqualified student advocacy services would be a breach of the FA.

5. **Failure to uphold TEQSA standard** - Standard 2.4(2) of the Higher Education Standards Framework provides that universities must ensure that:

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<sup>6</sup> The MPA appreciates this is a matter for the University

*There are policies and processes that deliver timely resolution of formal complaints and appeals against academic and administrative decisions without charge or at a reasonable cost to students.*

The MPA offers a free advocacy service that combines policy expertise with pastoral care. The MPA also has a referral service to various community-based agencies in the event the MPA is not able to provide advice in a particular matter. By recognising external providers putting themselves out as experts who charge fees for service, Monash University would arguably fail in meeting this TEQSA standard.

### Recommendations

1. That the University refer all students to their recognised representative bodies which in the case of postgraduates, is the MPA.
2. That the University amend its regulations prohibiting external advocacy services to operate within Monash University unless they are legally qualified providers, subject to the regulatory framework of legal practitioners.

The MPA appreciates that students sometimes have the support of parents and friends, and does not seek to prevent any student from having such help or support.

The MPA appreciates Monash University's consideration of this matter and look forward to further discussion.

For further information please contact the MPA Senior Advocate, Zuzana Quinn.

Email [zuzana.quinn@monash.edu](mailto:zuzana.quinn@monash.edu)