

1 October 2024

Gerry McNally
Committee Secretary
Senate Education and Employment Legislation Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Email: eec.sen@aph.gov.au

Dear Committee Secretary,

Inquiry into Universities Accord (National Student Ombudsman) Bill 2024
[Provisions]

1. Introduction

Thank you for the opportunity to make a submission to your inquiry into the above Bill (the **Bill**) to amend the *Ombudsman Act 1976* (the **Ombudsman Act**) to establish a National Student Ombudsman as a new statutory function of the Commonwealth Ombudsman.¹

The Executive Council of Australian Jewry (the **ECAJ**) is the peak, elected, representative body of the Australian Jewish community. It was established for that purpose in 1944 by Australian Jewish organisations and their elected leaders. The ECAJ's constituent organisations are the roof bodies of the Jewish community in each State and the ACT.² Other Jewish organisations which operate nationally are Affiliates of the ECAJ, and these include the Australasian Union of Jewish Students (AUJS).³ We also have a close working relationship with the 5A group, a recently-formed organisation representing Jewish and non-Jewish academics nationally.

¹ Explanatory Memorandum, Universities Accord (National Student Ombudsman) Bill 2024, *The Parliament of the Commonwealth of Australia*, [JC014050.pdf;fileType=application/pdf \(aph.gov.au\)](https://www.aph.gov.au/jc014050.pdf;fileType=application/pdf)

² Namely, the NSW Jewish Board of Deputies, the Jewish Community Council of Victoria Inc, the Jewish Community Council of Western Australia Inc, the Queensland Jewish Board of Deputies, the Jewish Community Council of South Australia, the Hobart Hebrew Congregation and the ACT Jewish Community Inc.

³ The other national affiliates are the Union for Progressive Judaism, Australian Federation of WIZO, Maccabi Australia Inc, National Council of Jewish Women of Australia, B'nai B'rith District 21 of Australia and New Zealand, Jewish National Fund of Australia Inc, Joint Distribution Committee Australia.



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This Bill is a significant development from the perspective of Australia's Jewish community, which has been adversely impacted by a sharp rise in antisemitic incidents and discourse on Australian university campuses, and a lack of accountability for such conduct, as well as an increasingly normalised culture of Jew-hatred that has become embedded in tertiary academic settings.⁴ The ECAJ welcomes the Australian Government's decision to introduce a national escalated complaints-handling mechanism for higher education students to complain about the actions of their higher education provider. It is an important reform, and it will need to be accompanied by other measures as outlined later in this submission.

Over the years, and especially in the last 12 months, the ECAJ has been in regular dialogue with the leadership of universities across Australia to advocate for an educational environment that is free of racial and religious discrimination and vilification and offers all Jewish and Israeli students, professional staff and academics the same opportunities to learn and to teach respectively that are offered to all other students and academics. Most recently, this advocacy has taken the form of strong support for the establishment of a judicial inquiry into antisemitism at universities (the **Judicial Inquiry**) under the *Commission of Inquiry into Antisemitism at Australian Universities Bill 2024* (No 2). However, we recognise that a suite of reforms is required irrespective of whether a Judicial Inquiry is granted, and a National Student Ombudsman is a key pillar of those reforms⁵, but only one of them.

Our submission sets out the nature of the problem facing Jewish students, professional staff and academics at Australian universities, and some recommendations for ensuring that the Bill can achieve its goal of creating an effective and trauma-informed pathway for the independent and impartial handling of escalated complaints about conduct at universities.

⁴ The growth and increasing intensity of antisemitic incidents and discourse on Australian university campuses is outlined in more detail in the Executive Council of Australian Jewry's submission to the Senate Inquiry into Antisemitism at Australian Universities Bill, 2024 (No. 2), 22 August 2024: <https://www.aph.gov.au/DocumentStore.ashx?id=27302e1f-21ca-4821-8faf-5c04d669452b&subId=762155>. Please also see the ECAJ's Annual Report on Antisemitism in Australia 2023, pp.142-144: <https://www.ecaj.org.au/wordpress/wp-content/uploads/ECAJ-Antisemitism-Report-2023.pdf>; Jewish University Experience Survey: July 2023: [Jewish University Experience Survey - Zionist Federation of Australia \(zfa.com.au\)](https://www.zionistfederation.org.au/wordpress/wp-content/uploads/Jewish-University-Experience-Survey-July-2023.pdf); 'New research shows widespread antisemitism in universities and online', ABC, 14 August 2024: [New research shows widespread antisemitism in universities and online - ABC News](https://www.abc.net.au/news/2024-08-14/new-research-shows-widespread-antisemitism-in-universities-and-online-abc-news/103155540); and Julie Nathan, 'Comprehensive study of hate incidents in Australia - updated', *Executive Council of Australian Jewry*, 22 June 2023: [Comprehensive study of hate incidents in Australia - updated \(ecaj.org.au\)](https://www.ecaj.org.au/wordpress/wp-content/uploads/Comprehensive-study-of-hate-incidents-in-Australia-updated-ecaj.org.au).

⁵ We express support for the position taken by Segal Jillian, Special Envoy to Combat Antisemitism, Submission to the Commission of Inquiry into Antisemitism at Australian Universities Bill 2024, 6 September 2024: <https://www.aph.gov.au/DocumentStore.ashx?id=74878e42-2c56-4517-9b1e-cfa7a30ec76c&subId=763089>.

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2. THE PROBLEM: Universities as Ground Zero for Antisemitism⁶

Small activist groups operating on Australian campuses have had a long history of promoting anti-Israel discourse and behaviour which has at times escalated into hostile behaviour towards Jewish students and staff. Even before the events of 7 October 2023, published reports provided powerful anecdotal evidence that the level and intensity of antisemitic discourse and incidents at Australian universities has been disproportionately high compared to manifestations of racism against other communities on campus.⁷ However, the intensity and frequency of reported anti-Israel and anti-Jewish incidents on campus has increased significantly since Hamas and other terrorist groups attacked Israel on 7 October 2023, videoed the atrocities they carried out against Israeli and other civilians and disseminated the videos online.

In October and November 2023 there was a 738% increase in the number of reported antisemitic incidents in Australia compared to the same two months one year earlier,⁸ and dramatically elevated levels of antisemitism show every sign of continuing. It is in this context that Jewish students and academic staff at Australia's elite universities have reported that the conditions under which they work and study have become unbearable as a result of the hostility they have experienced from some of their peers, solely because they are Jews who support Israel's right to exist, or even Jews who define themselves as non-Zionists.

A study published in July 2024 found that since the appearance of the anti-Israel encampments at universities many parents and caregivers of university students reported that this cohort were frequently avoiding university campuses, opting for online classes, and spending more time with Jewish friends and youth groups while dropping some friendships with non-Jews on account of the increasingly fraught social environment.⁹

⁶ This phrase was used by a Jewish professor at a prominent Australian university: Kelly, Joe, 'Australian unis labelled 'Ground Zero' in antisemitism fight', *The Australian*, 3 May 2024: <https://www.theaustralian.com.au/nation/politics/australian-unis-labelled-ground-zero-in-antisemitism-fight/news-story/361727b757b068375923cafdda264c35>

⁷ See the ECAJ's Annual Report on Antisemitism in Australia 2023, pp.142-144: <https://www.ecaj.org.au/wordpress/wp-content/uploads/ECAJ-Antisemitism-Report-2023.pdf>; Jewish University Experience Survey: July 2023: [Jewish University Experience Survey - Zionist Federation of Australia \(zfa.com.au\)](https://www.zfa.com.au); 'New research shows widespread antisemitism in universities and online', ABC, 14 August 2024: [New research shows widespread antisemitism in universities and online - ABC News](https://www.abc.net.au/news/2024-08-14/new-research-shows-widespread-antisemitism-in-universities-and-online/10401234); and Julie Nathan, 'Comprehensive study of hate incidents in Australia – updated', *Executive Council of Australian Jewry*, 22 June 2023: [Comprehensive study of hate incidents in Australia – updated \(ecaj.org.au\)](https://www.ecaj.org.au).

⁸ Julie Nathan, 'Preliminary statistics concerning surge in antisemitic incidents following Hamas atrocities in Israel on 7 October 2023' *Executive Council of Australian Jewry*, 15 December 2023: [» Preliminary statistics concerning surge in antisemitic incidents following Hamas atrocities in Israel on 7 October 2023 \(ecaj.org.au\)](https://www.ecaj.org.au).

⁹ Bajayo, Rachael, 'Wellbeing of Jewish Children and Young People Survey Report', *Project A*, July 2024: https://www.dropbox.com/scl/fi/5zi5fx2lbwt06v8wzcopt/Project-A-Wellbeing-of-Jewish-Children-and-Young-People-Survey-Report_FINAL_July2024.pdf?rlkey=9uah81d35l7abiiv9714izfoq&st=2sim33dp&dl=0

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Antisemitic discourse tends to be expressed through antisemitic tropes, which are phrases or images that sometimes subtly bring to life longstanding antisemitic ideas. Such tropes include, but are not limited to:

- the Blood Libel trope, which in the modern era translates into associating the Jewish identity of a person or group with the disappearance or murder of children and other forms of ‘barbarism’;
- the Global domination/power trope: Jews as collective — such as, especially but not exclusively, the myth about a world Jewish conspiracy or of Jews controlling the media, economy, government or other societal institutions. This is a myth that has been propagated in many notorious antisemitic publications such as the fabricated document known as the “Protocols of the Learned Elders of Zion” and Hitler’s “Mein Kampf”;
- the Great Replacement Theory: the idea that Jews are working to increase the number of non-white people in society;
- the wealth/greed trope: the notion that Jews are rich and obsessed with gaining more wealth;
- the disease/filth trope: the false accusation that Jews are both diseased and spreaders of disease. This is often part of a broader trope that dehumanises Jews by portraying them as vermin or insects;
- the Holocaust denial/distortion trope; and
- the dual loyalty trope: an implied or direct accusation that Jews in the diaspora (Jews who live outside of Israel) are ultimately more loyal to Israel or a secret Jewish cabal than the country in which they have citizenship.¹⁰

These tropes are prevalent in the antisemitic posters, stickers and paraphernalia that have come to dominate physical spaces in campuses as well as in the discourse being propounded in lectures, tutorials, encampments, faculties and professional services buildings on university campuses.

It is also important to note that for the overwhelming majority of Jews, including in Australia¹¹, and for many other people, the Jewish people have an inalienable right of self-determination in their historic homeland, Israel, where the Jewish people have had an enduring spiritual, religious and physical connection for more than 3,000 years,

¹⁰ [Antisemitic Tropes Chart.pdf\(facinghistory.org\)](#)

¹¹ Gen17 Survey of the Australian Jewish community, Monash University, 2018: [Graham-Markus-2018-Gen17-Initial-Findings-report-ONLINE-copy.pdf\(jca.org.au\)](#)

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including more than 1,000 years of national self-government. This is what most Jewish people mean by “Zionism” and this is why they support it. This right has been recognised in resolutions of the United Nations and its predecessor the League of Nations, and is grounded in the right of self-determination of peoples enshrined in the UN Charter, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.¹² In Australia, Israel’s right to exist as the national home of the Jewish people and to defend itself against armed attack is supported by Labor and the Coalition and by Independent MPs.

Consequently, for the vast majority of Australian Jews, denial of the basic, universal right of national self-determination to the Jewish people is self-evidently discriminatory against, and dehumanising of, Jews and is therefore a form of antisemitism.

This is not to suggest that it is antisemitic to criticise Israeli government policies or practices or the statements and conduct of Israeli political figures, in the same way that criticisms are levelled against other governments and political figures. Nor is it antisemitic to hold particular views about the borders of Israel, settlements, refugees, the legal status of Jerusalem or the viability of a two-State outcome to the Israel-Palestinian conflict. Among Israelis, the Jewish people and others who support Israel there is a wide range of views about these issues. However, the discourse about Israel on many university campuses in recent years, and especially since the Hamas atrocities on 7 October 2023, has gone well beyond discourse of this nature. The discourse has included:

- demonisation of Jews and Israelis and denial of their fundamental rights;
- refusals to condemn, or expressions of outright support for, atrocities that have been committed against Jews, and the perpetrators of those atrocities; and
- verbal abuse, harassment and intimidation of Jewish students and staff who refuse to accept an anti-Israel narrative, or who dare to criticise the policies and practices of Palestinian leaders and organisations.

The Director-General of ASIO, Mike Burgess, recently emphasised how dangerous inflamed language can be, especially with regard to impressionable young people who can be triggered into engaging in violent extremism. In discussing anti-Israel comments in particular, he said:

¹² ‘Right to Self-determination’, *Australian Human Rights Commission*, available at: [Right to self determination | Australian Human Rights Commission](https://www.humanrights.gov.au/right-to-self-determination).

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“We all need to watch our language because there is a direct connection between inflamed language, inflamed tension and violence...Sadly we are seeing that play out in our society.”¹³

These considerations only emphasise the need for universities to develop and adopt a set of criteria to guide them in assessing complaints involving allegations of antisemitic discourse. The International Holocaust Remembrance Alliance (IHRA) Working Definition of Antisemitism is a non-legally binding definition that has been adopted by the Australian Government, endorsed by the Opposition, and adopted by the NSW Legislative Council and many other governments and tertiary institutions around the world.¹⁴ Claims that the IHRA definition is an unwarranted fetter on freedom of expression are based on a misunderstanding and/or misrepresentation of its meaning and effect. The IHRA definition has near-unanimous acceptance among Jewish communities in Australia and worldwide. It would be entirely self-defeating for universities to adopt any definition of antisemitism that is rejected by an overwhelming majority of Jews. This would simply replicate the existing intolerable situation whereby Jewish students and staff are often deterred from coming forward with complaints about antisemitism because of a sense that they will not be understood.

In addition to allowing the development of an environment of hostile discourse, universities have at times enabled or tolerated discriminatory treatment of students and staff who identify as Jewish or Israeli. A striking example of what some Jewish students have been experiencing at one University, and the supine passivity of university administrators, was recently published online.¹⁵

In the ECAJ’s experience, students and staff have tended to be unwilling to escalate complaints about antisemitism within their universities for the following reasons:

- A lack of confidence in the capacity of university administrators to understand what contemporary antisemitism is, and to act effectively against it.
- Distrust in the complaints handling process resulting in what they perceive as a fair outcome or any outcome at all;

¹³ Worthington, Brett, ‘ASIO boss Mike Burgess warns friendly nations among countries interfering in Australian communities’, *ABC News*, 11 August: <https://www.abc.net.au/news/2024-08-11/asio-boss-warns-friendly-nations-interfering-in-australia/104211120>

¹⁴ See statement by then Opposition leader Anthony Albanese to Executive Council of Australian Jewry on 14 July 2021: » ECAJ hosts meeting between Federal Opposition leader Anthony Albanese and national Jewish community leadership and statement of the shadow Minister for Foreign Affairs Senator Penny Wong at Zionist Federation of Australia conference, 22 November 2020: <https://www.youtube.com/watch?v=exaC2wvaZCQ>

¹⁵ Meow Girl, ‘Rejecting Mob Mentality’, *Substack*, 8 August 2024, https://meowgirl.substack.com/p/silenced-voices?utm_medium=ios

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- Distrust in the confidentiality of the complaints handling process and the security of their personal data;
- Fear of the personal consequences of making complaints including hostility, social ostracization and public humiliation from fellow students / staff;
- Fear that they will suffer from reprisals for making complaints – this fear is not unsubstantiated in that both prior to and after the events of 7 October 2023, the ECAJ has had direct contact with:
 - students who believe that they have suffered lower grades or other consequences such as retaliatory complaints as a result of them having made a complaint to their university about antisemitic conduct;
 - staff who believe that speaking out has or will lead to termination of their employment or imperil their prospects for career advancement.

There have been only rare exceptions to the backdrop of weak leadership across many Australian university campuses, which has been characterised by a failure of several universities to take a public and meaningful stand against specific manifestations of antisemitism or to hold those responsible to account. At times, some university administrations have appeared to be passively complicit in the rise of antisemitism on campus. Consequently, many Jewish students and academics have reported that they feel marginalised and dehumanised, and, in some instances, verbally abused, harassed or intimidated on campus.

A university culture has developed over a much longer period, and is characterised by:

- the holding of events on campus to discuss the Israel-Gaza conflict which have rigidly excluded the views of the majority of Jewish students and staff;¹⁶ and
- the promotion of anti-Israel speakers from the political far fringes of the Jewish community in order to create a false impression of prevailing Jewish opposition to Israel and Zionism, and to overcome accusations of antisemitism stemming from the denial of a voice to the majority of Jewish students and staff.

¹⁶ These events and the encampments have adopted a deliberate strategy of non-engagement and refusal to debate Jews, Israelis or others who support the right of the State of Israel to exist, which is antithetical to the values of free speech and debate. Yet often it is the university management and staff who defend such events, the expressions of protesters in the encampments, and antisemitic paraphernalia around campuses, claiming that it is on the basis of free speech and academic freedom. Similarly, there have been numerous instances of professors and lecturers making biased and/or antisemitic or anti-Israel assertions but refusing to engage with any student challenging these in class.

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This culture normalises antisemitic discourse and incidents, and enables an environment that is threatening, abusive and dehumanising for Jewish and Israeli students, staff and academics. As a result, many have reported: that they have concealed any expressions or outward indications of their identity; significant absences from their courses on account of concerns about antisemitic threats or encounters on campus; a decline in their mental health resulting in the need for medical intervention; the adoption of self-censorship measures in their coursework or in their online interactions associated with the university; the observance of antisemitic social media posts by lecturers or fellow students; behaviours that include antisemitic slurs, vandalising of the entrance to dorm rooms or buildings, Nazi salutes and spitting from others on campus on account of their Jewish or Israeli identity; and being on the receiving end of less favourable treatment than other students on account of their identity.

3. THE SOLUTION: A Judicial Inquiry and a suite of reforms including a National Student Ombudsman

The ECAJ recommended that the Education and Employment Legislation Committee indicates its support for the Judicial Inquiry to the Senate Legal and Constitutional Affairs Committee and views the establishment of a National Student Ombudsman (the **Ombudsman**) as one of several essential reforms required to address antisemitism at universities.¹⁷ This would be consistent with the position on gender-based violence as set out in the Action Plan¹⁸, namely that the Ombudsman is only one of a raft of measures to address such gender-based violence at universities. To that end, we endorse the recommendations put forward by the Special Envoy to Combat Antisemitism in her submission to the Senate Inquiry. These recommendations include:

- the implementation of best practice policies;
- working with The Tertiary Education Quality and Standards Agency (the **TEQSA**) to see if more can be done by it to ensure Codes of Conduct are enforced or to examine whether their powers need to be enhanced;
- taking aspects of the Universities Accord's approach such as emphasis on recommendations and performance targets as a means of improving the problem of antisemitism in tertiary institutions;

¹⁷ [Independent National Student Ombudsman to improve student safety | Ministers' Media Centre \(education.gov.au\)](#)

¹⁸ 'Action Plan Addressing Gender-based Violence in Higher Education', Department of Education, 23 February 2024: [Action Plan Addressing Gender-based Violence in Higher Education - Department of Education, Australian Government](#)



- the establishment of a national database and hotline for racist incidents and discourse;
- the adoption by universities of the IHRA Working Definition of Antisemitism (**IHRA Working Definition**)¹⁹, as do most democratic countries including Australia;
- the implementation of training modules on antisemitism,

as well as the expansion of the remit of the Ombudsman and the provision of qualified resources so that it is empowered and resourced to manage complaints about antisemitism specifically. The ECAJ has also called for the overhaul of the complaints process and a charter of conduct for students.²⁰

As the Ombudsman is currently constituted under the Bill, its main functions comprise:

- dealing with complaints about actions taken by higher education providers;
- conducting investigations into actions taken by higher education providers, on its own initiative;
- reporting and making recommendations;
- giving higher education providers advice and training on handling complaints; and
- such other functions conferred on the Ombudsman by the Bill or by another piece of legislation.²¹

As stated, the ECAJ welcomes the Bill and believes it will be a significant piece in the package of reforms to ensure that higher education providers are held accountable for actions that give rise to complaints. We also welcome the specific protections in the Bill for complainants from reprisals²², which are a real concern for Jewish students who make complaints about actions by staff at universities. However, we note the following areas of the Bill which, in our view, require further attention.

¹⁹ The internationally-accepted definition of antisemitism is set out by the International Holocaust Remembrance Alliance at: <https://holocaustremembrance.com/resources/working-definition-antisemitism>

²⁰ Peter Wertheim at the ECAJ recently said that universities such as the University of Sydney need 'to go further and introduce five new measures that would protect Jewish students in the future. They include adopting a new definition of antisemitism "that has credibility with the majority of Jewish students and staff"; the overhaul of the complaints process; professional development for staff processing complaints; independent oversight of the complaints handling process and a charter of conduct for students'" in Hare, Julie, 'Jewish group rejects calls for Sydney uni's Scott to resign', *Australian Financial Review*, 27 September 2024: [Israel Palestine: Jewish group rejects calls for Sydney University boss Mark Scott to resign \(afr.com\)](https://www.afr.com/palestine/jewish-group-rejects-calls-for-sydney-university-boss-mark-scott-to-resign-20240927)

²¹ See Section 21AC, Part IIF, Division 2, *Universities Accord (National Student Ombudsman) Bill 2024* [Provisions].

²² We refer to Section 35D 'Protection from reprisals – what constitutes taking a reprisal' and other parts of Section 35 of the Bill.

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Australian Federation of WIZO
Union for Progressive Judaism
Federation of Jewish Aged Car Services
Maccabi Australia
National Council of Jewish Women
B'nai B'rith of Australia/ NZ
Jewish National Fund of Australia
Joint Distribution Committee Australia

OBSERVERS
Council of Progressive Rabbis
Federation of Australian Jewish
Ex-Service Associations
New Zealand Jewish Council
Zionist Federation of Australia
Council of Orthodox Synagogues
of Australia

**(a) No reference to external expert training for the office of the Ombudsman**

The Explanatory Memorandum sets out the General Outline of the Bill and notes that ‘The National Student Ombudsman will be able to handle complaints about a broad range of issues – from gender-based violence to reasonable adjustments for students living with disability’. The Ombudsman is to ‘adopt a trauma-informed approach to complaint handling and offer restorative engagement processes where appropriate, and bring parties together to resolve complaints through an alternative dispute resolution process as needed’.²³ While these are worthwhile goals, this formulation is ill-suited to addressing racism, which requires measures to respect psycho-social safety, even if the impact does not rise to the level of “trauma”.

Further, the range of complex issues that would fall within the Ombudsman’s remit requires expertise to navigate. For instance, all forms of racism are pernicious, but they manifest themselves quite differently, and, as the Special Envoy to Combat Antisemitism noted in her recent submission to the Senate Inquiry:

“Antisemitism is a unique type of racial hatred that is not broadly understood. It is an ancient hatred based on disinformation and misinformation, and its building blocks are antisemitic tropes²⁴ that can be subtle yet extremely pervasive. History has shown that in times of economic insecurity, antisemitism bubbles to the surface and becomes socially acceptable. Antisemitism has always been stubborn and shape-shifting, and it is not sufficiently responsive to policies instituted to deal with racism more broadly.”

While similar patterns of behaviour identified in the *Change the Course* report²⁵ are exhibited with respect to the way that universities have been managing reported incidents of antisemitism, and there are no doubt transferable lessons with regard to how universities generally approach different types of abuse or discrimination, it is essential that the Ombudsman is provided with an appropriate framework, sufficient expertise and training to be able to handle such a diverse range of complaints. Part of the necessary framework will be understanding at a definitional level what constitutes

²³ Explanatory Memorandum, Universities Accord (National Student Ombudsman) Bill 2024, *The Parliament of the Commonwealth of Australia*, [JC014050.pdf?fileType=application/pdf](https://www.aph.gov.au/jc014050.pdf?fileType=application/pdf) (aph.gov.au)

²⁴ [ADL Publishes New Guide to Antisemitic Tropes | ADL](https://www.adl.org.au/antisemitism); and [Antisemitic Tropes Chart](https://www.facinghistory.org/antisemitism) ([facinghistory.org](https://www.facinghistory.org))

²⁵ [Change The Course: National Report on Sexual Assault and Harassment | Australian Human Rights Commission](https://www.humanrights.gov.au/sites/default/files/document/publication/AHRC_2017_ChangeTheCourse_UniversityReport.pdf) and *Change the Course: National report on sexual assault and sexual harassment at Australian universities 2017*, Australian Human Rights Commission, 2017:

https://humanrights.gov.au/sites/default/files/document/publication/AHRC_2017_ChangeTheCourse_UniversityReport.pdf



the various types of racism, abuse or other issues, and for this reason we urge the Ombudsman to adopt the IHRA Working Definition in relation to any complaints concerning antisemitic conduct at universities.

Recommendation 1: that the Ombudsman's office be provided with appropriate frameworks, sufficient expertise and ongoing training in order to handle complaints across a range of issues, including different forms of racism and bigotry.

Recommendation 2: that the Ombudsman adopt the IHRA Working Definition of Antisemitism and use it as a tool in assessing all complaints before it concerning antisemitic conduct.

(b) Limited powers under the Bill

The ECAJ believes that it is unlikely that the Ombudsman will be able to procure the information it seeks through its investigations, without greater powers being conferred on it by the Bill. We are painfully aware of the cost – both in terms of time and financial resources – to access information under the Freedom of Information (FOI) and Government Information Public Access (GIPA) regimes, and the lengths to which university administrations will go to in order to avoid disclosing certain kinds of information. Section 21AU of the Bill does not seem adequate to equip the Ombudsman to conduct its investigations given the complexity of the matters it will be investigating and the obfuscation the Ombudsman may encounter by an obstructive or non-co-operative university. Section 21AZA does enable the Ombudsman to give a person a written notice requiring information, and we note that a failure to comply may result in the Ombudsman making an application to the Federal Court of Australia for a direction pursuant to Section 21AZC(4). However, this provision could be used as a kind of tactic by universities to exhaust the resources of the Ombudsman's office by diverting its efforts towards litigation rather than investigation.

In addition, following an investigation the Ombudsman can only provide recommendations to the higher education provider whose actions it has investigated, and there is no power to compel that provider to implement the recommendations.²⁶ The ECAJ's concern is that the Bill may risk creating another structure that is lacking in sufficient power to sanction higher education providers for their actions. Already TEQSA is not empowered to make a legal determination about whether tertiary education providers are operating in accordance with the law, and it is limited to imposing

²⁶ See section 21AA, Part IIF, Division 1, *Universities Accord (National Student Ombudsman) Bill 2024* [Provisions].



administrative sanctions in the event of non-compliance. We would suggest that the Bill confers on the Ombudsman the power to take limited action in relation to universities in the event that they do not implement its recommendations within a reasonable timeframe. Such action may come in the form of financial penalties imposed on the universities to cover the costs of the Ombudsman's office in conducting the investigation.

Recommendation 3: that the Bill confers on the Ombudsman some additional powers to take action in the event that universities fail to implement its recommendations within a reasonable timeframe.

(c) Excluded actions

Another limitation that the current Bill imposes on the Ombudsman is that it cannot deal with complaints about, or investigate, what are referred to as 'excluded actions' by higher education providers.²⁷ The definition of 'excluded actions' is wide and includes, among other things:

- "any action taken with respect to a person employed by a higher education provider, being action taken in relation to that employment;
- any action taken with respect to the appointment of a person to an office of a higher education provider; and
- any action to the extent that the action involves the exercise of academic judgment".²⁸

Our concern is that a significant proportion of the problematic antisemitic conduct that occurs at the universities takes place in lectures and tutorials – both in person and online - in which lecturers engage in antisemitic discourse. In such instances they may be able to argue that they are 'exercising academic judgment' by citing disinformation or misinformation that leads them to deny or seek to minimise atrocities committed against Jews or to reference prevalent antisemitic tropes. In many instances that we are aware of, Jewish students have challenged perspectives put forward by academics, only to find themselves with unusually low grades in those subjects, but in such instances the academic has asserted that they were exercising academic judgment, or that the student has engaged in some type of misconduct.

²⁷ *Ibid.*

²⁸ See Section 21AD(3), Part IIF, Division 3, *Universities Accord (National Student Ombudsman) Bill 2024* [Provisions].

²⁸ [Independent National Student Ombudsman to improve student safety | Ministers' Media Centre \(education.gov.au\)](#)



An example of how this exclusion might be abused was the series of cases beginning with *Anderson v University of Sydney*. The cases concerned a finding by the University that a lecturer, Anderson, had engaged in antisemitic conduct by superimposing an Israeli flag over an image of the Nazi *Hakenkreuz*. Anderson claimed that he was exercising his academic judgement. The Federal court initially upheld the University's termination of Anderson's employment; the Full Federal Court overturned the decision and remitted it back to the same judge; that judge then reversed his earlier decision; and the Full Court finally overturned that decision too, and upheld the validity of the University's dismissal of Anderson.²⁹ Clearly, this exclusion needs to be qualified by the addition of the words "reasonably and in good faith", or some similar formulation.

Furthermore, if the Ombudsman is to be effective at reducing the volume of complaints, the ECAJ believes that a core aspect of their role must be to seek transparency in relation to actions of universities including those taken in relation to employment, or with respect to the appointment of a person to an office. For instance, if a university was to make a hiring decision that involved the appointment of a notorious Holocaust denier to their faculty of history, the ECAJ would assert that this should be a reasonable basis for a student or organisation acting on the student/s behalf, to make a complaint to the Ombudsman.

Recommendation 4: that the scope of excluded actions be reduced and more objectively defined in order to better strike a balance in favour of the human rights of complainants.

(d) Only students or those acting on their behalf may make a complaint

As noted in Section 1 above, students, professional staff and academics have experienced a steep rise in antisemitic incidents and discourse at universities in the lead-up to and following the massacre on 7 October 2023, but the Ombudsman may only receive complaints from students, either directly or on their behalf.³⁰ The ECAJ believes that this gap ought to be addressed by the Bill, as there is no reason to think that systemic issues at universities, including antisemitism, are confined to the student body. While there is a substantial power imbalance between staff and students at

²⁹ 'Full Federal Court finds University of Sydney validly terminated the employment of its academic staff member', Banco Chambers, 20 May 2024: Full Federal Court finds University of Sydney validly terminated the employment of its academic staff member, Dr Anderson | News | Banco Chambers.

³⁰ See Section 21AD, Part IIF, Division 3, *Universities Accord (National Student Ombudsman) Bill 2024* [Provisions].



universities, it is important to recognise that within the professional staff and academic staff bodies there are also power imbalances that may mean that staff do not have adequate recourse for complaints and require an independent and impartial complaints-handling mechanism.

Recommendation 5: The Ombudsman may consider complaints from staff against universities, especially where such complaints reveal systemic issues and the Ombudsman assesses that the complainant cannot raise the complaint through other available avenues.

(e) The Bill does not address inaction

One of the most startling features of the rise of antisemitic discourse and incidents at universities has been the complete failure by universities' leadership to take any kind of action. For instance, many campuses are overrun with graffiti, posters and stickers, many of which contain antisemitic phrases or images, but the universities have not acted to remove these in a timely fashion. Many staff report the eerie silence of their colleagues even when they indicate that they and their families are suffering due to events in Israel and/or antisemitism. Many students reported requesting special consideration in the event of the loss of a family member on 7 October or in the war, or on account of the psychosocial impact of a university encampment or other events, only to receive no response or a response that came too late. In such instances, the Bill seems not to treat such inaction as a form of action that could give rise to a complaint.

Recommendation 6: that the Bill expressly state that it applies to actions or omissions by higher education providers.

4. Conclusion

The ECAJ supports the introduction of the *Universities Accord (National Student Ombudsman) Bill 2024* [Provisions] as part of an essential package of reforms that will help address the deficit of accountability in the tertiary education sector. As it stands, the Bill will be a significant mechanism for higher education students to complain about the actions of their higher education provider.

We have suggested some modifications to the Bill that will better enable it to address some of the challenging systemic issues at universities. In addition, we maintain that a judicial inquiry into antisemitism on university campuses in Australia is the only effective way to establish the truth about the nature and extent of antisemitic incidents



**EXECUTIVE
COUNCIL OF
AUSTRALIAN
JEWRY**

הוועד הפועל של יהודי אוסטרליה

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and discourse at universities across Australia while preserving the confidentiality of Jewish students', academics' and professional staff's personal data and protecting their security. To that end, we urge the Education and Employment Legislation Committee to indicate its support for the Judicial Inquiry to the Senate Legal and Constitutional Affairs Committee.

Yours sincerely,

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