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Universities Accord (National Student Ombudsman) Bill 2024 [Provisions] Submission from Edith Cowan University

Edith Cowan University (ECU) welcomes the opportunity to comment on the Universities Accord (National Student Ombudsman) Bill 2024 [Provisions].

Establishment and functions

ECU supports broadening the national student ombud's function from gender and gender-based violence to include all forms of marginalisation and discrimination, including racism, ableism, homophobia and biphobia, transphobia, Islamophobia, antisemitism, xenophobia, and ageism. The ombud provides an opportunity to address all forms of marginalisation and discrimination experienced by students during their studies.

Division 2 should therefore require that the national student ombud be supported by a remunerated representative student advisory body, including Aboriginal and Torres Strait Islander students, people with disability, LGBTIQ+ students, regional and remote students, international students, culturally and racially marginalised students, and higher degree by research candidates. The ombud should also engage with organisations that can provide direct insight into lived experiences in the broader communities.

Excluded actions

To reduce confusion and duplication between the roles of the national and state/territory ombuds, ECU recommends adding the following to the list of excluded actions:

- Any action that is being investigated by, or is awaiting a response from, the higher education provider or a State or Territory body.

Actions simultaneously reported to the national ombud and the state/territory ombud or higher education provider may result in dual investigations, contradictory outcomes, and an overlapping burden of requests for information for the complainant.

The Ombudsman of Western Australia will only commence an investigation after the higher education provider's internal processes of review and appeal have been exhausted. ECU recommends that the internal processes of the higher education provider should be complete before a report can be made to the national ombud. This removes the need for the ombud to

investigate where a satisfactory outcome has been reached internally, and would align to current practices in WA and the legal system.

Section 21AJ allows for the national ombud to decline to deal with a complaint because it has been, or is being dealt with, by another Commonwealth body or state or territory ombud or body, but this means the complainant may still spend unnecessary time and effort making multiple complaints.

Sections 21AE and 21AH allow for the referral of actions from the state or territory ombuds to the national ombud, or vice versa, where the second party could access existing information and conduct a review efficiently. This is preferable to the national and the state/territory ombuds expending their resources and efforts on conducting parallel investigations.

The proposed excluded action above does not preclude a complainant taking a complaint to the national ombud where they are dissatisfied with the higher education provider's or state or territory ombud's resolution – it merely avoids simultaneous duplication of effort.

Actions under the ombud's own initiative

Section 21AT states that the national ombud may investigate actions on its own initiative. It is unclear if this overrides sections 21AG(2) and (3), which state any action must end if the complaint is withdrawn or the complainant no longer wishes to proceed.

Reports to higher education providers

The scope of section 21AV is very broad, particularly 21AV(1)(b)(iii), since it includes actions where the higher education provider was, in the opinion of the ombud, "in all the circumstances, wrong". This goes further than errors in administrative law, and its ambit appears wide enough for a merits review of the decision.

Notice requiring information, documents or attendance to answer questions

Section 21AZA states that an individual must produce information regardless of protection against disclosure by legal professional privilege, or the disclosure being against public interest. For comparison, Section 144 of the [*Corruption, Crime and Misconduct Act 2003 \(WA\)*](#) states:

"(1) Subject to subsections (2) to (5), nothing in this Act prevents a person who is required under this Act to answer questions, give evidence, produce records, things or information or make facilities available from claiming legal professional privilege as a reason for not complying with that requirement."

ECU recommends that legally privileged information, and information contrary to public interest, be afforded much greater protection. Ordinary rules of privilege should apply.

Title of the ombud

As per its submission to the consultation, ECU considers the term "ombudsman" problematic, given the remit of the *Action Plan Addressing Gender-based Violence in Higher Education*. The suffix "-man" is not gender-neutral, as recognised by the now common usage of "spokesperson" instead of "spokesman", "chair" or "chairperson" in preference to "chairman", and "police officer" rather than "policeman". As such, ECU recommends that the title uses the word "ombud" or "ombudsperson".

Definitions

ECU notes that in the definitions, page 4 line 24 refers to “enabling course”. This is inconsistent with the Universities Accord (Student Support and Other Measures) Bill 2024 which would rename enabling courses as “Fee-Free Uni Ready” courses.

Further information

If you have any queries relating to the content of this response, please contact me by email
or by telephone .

Yours sincerely,

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