

**Senate Education and Employment Legislation Committee Inquiry into the Higher Education Support Amendment (Response to the Australian Universities Accord Interim Report) Bill 2023**

**NTEU Response to Questions on Notice**

Topic	Questions
50 per cent pass rule	On what basis does the NTEU claim that the 50 per cent rule is arbitrary and unfair? Please provide the data on which you have based this claim.
Student Support Policy	The Department of Education has released a consultation paper to develop a student support policy. Did the Department or the Minister's Office consult with the NTEU in developing this paper? a) If so, please advise the date the NTEU was consulted.
Student Support Policy	In terms of student satisfaction with teaching and course quality, do you support a student ombudsman being put in place as a mechanism for students to escalate complaints to if they are unsatisfied with the response provided by the university processes?
Student Support Policy	Is the NTEU supportive of legislation for the student support policy being passed before the policy is actually developed?
University governance	Can the NTEU please outline any examples of poor university governance it has come across over the last 10 years?

Please find below the NTEU's response to questions on notice.

Question 1: 50 per cent pass rule	On what basis does the NTEU claim that the 50 per cent rule is arbitrary and unfair? Please provide the data on which you have based this claim.
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The NTEU has consistently and actively opposed all negative measures associated with the Jobs Ready Graduate (JRG) legislation, introduced in 2020 by the Coalition Government. This includes the 50 per cent pass rule. The NTEU bases this belief on the following:

- Over 87 percent of students studying at university rely entirely on the HECS/HELP scheme to study (see 2017 data, *Higher Education Loan Program (HELP) and other student loans: a quick guide*).
- The National Union of Students (NUS), Headspace and University of Canberra National Tertiary Student Wellbeing Survey (2016) found that upwards of 70 percent of students have experienced depression and anxiety, illuminating a crisis of student wellbeing and mental health. Additionally, the joint NUS and ACOSS Starved of Opportunity survey

showed that 80.1 per cent of respondents on income support said they struggled with cost for essential study items and fees. Noting that issues with mental health and financial security are interlinked, these factors are known to cause significant disruption to study.

- In a joint survey with Headspace, the NUS found that more than 80 per cent of students suffered low motivation or energy when studying.
- While the 50% rule made allowance for illness or bereavement, the NTEU does not accept that this adequately accounts for the plethora of experiences that impact student success – for example, sexual harassment is a significant issue for many students, the effects of which may be highly disruptive to studies, but unless counted as an ‘illness’ it is unlikely to come under the allowances.
- We also believe that due to a lack of reporting of issues within the student body, coupled with support services that have been impacted by COVID job losses and restructures at universities, students have fallen through the cracks and as a result have ceased study. This is especially concerning for students of low socioeconomic status (low SES), students with carer responsibilities, First Nations students, student survivors, and students with disabilities.

While student data has not been published by the Department for 2022 or 2023, we note that both universities and the Government have indicated that students have been substantially impacted by this rule, and in far greater numbers than was originally predicted (emphasis added).

Minister Clare in his speech to the press club on July 19<sup>th</sup> stated:

***“At Western Sydney University this year it has already led to 1,350 students being forced to quit. Most of them from poor backgrounds. More than 13,000 students at 27 universities have already been hit by this.”***

The Universities Accord in its Interim Report cited evidence from Universities Australia that more than 8,000 students have been or are at risk of being affected by the rule, noting that:

***“The measure is causing undue stress for students and advice suggests that more than 8,000 students have been or are at risk of being affected by this rule. Students from underrepresented groups at university make up the majority of those affected and First Nations students are around twice as likely to be affected as their non-First Nations counterparts.”***

We also note that the G08 in its evidence to this Senate Inquiry stated that across the Go8 (8 institutions out of 38), around **1,300 of 450,000** students were impacted by the 50 percent pass rate rule in 2022-23 alone. The Go8 also gave numbers on the high proportion of students who were from low SES backgrounds, were regional or remote, had a disability or were First Nations.

However, the G08 acknowledges that its numbers of impacted students are far **less than what some other institutions have found**, and recommends that the Inquiry hear from other universities. To illustrate, we noted that in evidence provided to this Inquiry it was revealed that La Trobe university had 447 students impacted in the last 12 months, with 151 withdrawing entirely from studies. Other institutions have provided their own figures to the Universities Accord Review, which has recommended the withdrawal of the rule.

Regardless, taking into account the Go8 evidence, the Western Sydney University information and the information provided to the Universities Accord review by Universities Australia and individual institutions, it is clear that the **original estimation of 2,500 students per year by the Department of Education in 2020 is grossly incorrect**. We question the veracity of the data behind this original estimation.

In addition to the statements made by sector bodies and the Government, the comments made in the Universities Accord Interim Report reinforces the NTEU's view that the 50% pass rule is having a detrimental impact.

The NTEU notes that the Universities Accord Review panel determined that the 50% pass rule to be "unfair and unnecessary", and that the Review recommended its removal as a "priority" stating that: *"Introduced as part of the JRG package, the 50% pass rule disproportionately disadvantages students from equity backgrounds."*

The Accord Review Interim report also found that: *"The 50% pass rule implemented through the JRG package is also causing undue stress for many students. Most of the students affected by this rule are from underrepresented groups, including First Nations students, who are around twice as likely to be affected as other students."*

And that:

*"The 50% pass rule included in the JRG package has had greater impact on students from underrepresented backgrounds, compounding the negative effect JRG had on students, particularly those from equity groups."*

As noted, the NTEU has strongly and consistently opposed this provision of the JRG changes.

In our submission opposing the JRG legislation in 2020 we noted that the Higher Education Standards Framework (Threshold Standards) 2015 already requires universities to have processes that identify students at risk of unsatisfactory progress and provide support to these students. As a result, all universities have policies concerning academic progression aimed at ensuring students who unable to complete a course do not continue to enrol (usually through a 'show cause' process). As stated by Andrew Norton in 2020, and cited in our original submission, it was highlighted that:

*Students who fail more than half their subjects are already at risk of exclusion. As part of the Grattan Dropping Out report research, in 2018 a colleague collated a sample of university unsatisfactory progress policies. In almost every one of them, failing more than half of subjects taken in a semester will lead to a formal intervention or warning. The others had low average marks indicators that imply subject fails. If poor performance persists, the student will have to 'show cause' why the university should not exclude them.*

However, unlike the JRG legislation which has a limited list of exemptions, the university processes consider the circumstances of the student and refer students who want to continue to programs and support mechanisms that will assist in their progression through their course, irrespective of their educational background, entry pathway or place of study. Again, in the NTEU's original submission opposing the JRG legislation, we cited Norton:

*The relevant circumstances have to be beyond the student's control and not occur, or have their full impact, until after the subjects census date. The examples given in the guidelines include: medical conditions that prevent the student completing the subject, the medical condition or death of a family member, an uncontrollable change in employment arrangements, or where the provider has changed the subject in ways that make completion difficult. ...These rules don't cover more general issues, such as trouble adapting to university life, or lower-level medical issues that make study more difficult but don't meet the level required for a section 36-20 HELP remission. Universities are, however, free to take these considerations into account as part of the unsatisfactory progress process.*

We note that in evidence given to this Inquiry, it was stated that at Monash University, of the 331 students that triggered the rule, **exemptions were only granted for 18 students on the grounds of medical mental health family or bereavement.**

The Grattan Institute's Dropping Out (2018) report confirms that prior academic performance is predictive of completion rates and that students who have previously failed half or more of their subjects have an elevated risk of non-completion. However, more importantly, **research also found that more than half of the students who return or recommence new study are eventually successful in obtaining a degree.** However, the information from universities in how the 50% pass rule has been applied (as noted above) indicates that students are often being dissuaded from attempting further studies.

The NTEU therefore maintains that the 50% pass (or fail) rule is punitive, unfair, and inequitable, and not needed – there are far more effective measures to assist students who have encountered difficulties in their studies and/or are at risk of failure.

Question 2: Student Support Policy	The Department of Education has released a consultation paper to develop a student support policy. Did the Department or the Minister's Office consult with the NTEU in developing this paper? a) If so, please advise the date the NTEU was consulted.
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The NTEU was not consulted in relation to the development of the student support policy.

Question 3: Student Support Policy	In terms of student satisfaction with teaching and course quality, do you support a student ombudsman being put in place as a mechanism for students to escalate complaints to if they are unsatisfied with the response provided by the university processes?
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In the NTEU's submission to the Accord Review in April 2023, the NTEU recommended that the Expert Panel consider the introduction of a national Higher Education Student Ombudsman. This has been a long-standing policy position of the NTEU, which the Union has consistently recommended in various submissions to Inquiries and Reviews.

We noted that while all states and territories have some version of this, there are a number of variations in scope that lead to inconsistencies. Furthermore, the move to online learning means that the provider the student is studying with may not be local, or even in their state or territory, and this can confuse matters when the student is seeking advice or wishes to lodge a complaint.

In our submission, we further noted that the Commonwealth Ombudsman can currently investigate complaints from international students about private schools, colleges, institutes, and universities in Australia, but this does not extend to domestic students who have a commonwealth supported place at a public university. Similarly, while students may make a complaint directly to TEQSA, the regulator does not act on individual complaints, but will just record it as part of the overall quality assurance and compliance processes.

Below is the recommendation that the NTEU made to the Accord Review in April 2023:

Recommendation: Establish and fund a national student ombudsman to deal with student complaints and grievances relating to public higher education providers.

Question 4: Student Support Policy	Is the NTEU supportive of legislation for the student support policy being passed before the policy is actually developed?
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Generally, it has been our observation that policy, regulations and/or guidelines in relation to legislation have in the past often been drafted either alongside, or following, the creation of legislation (in fact, this applied to some of the funding associated with the JRG in 2020). It would appear that this is the process that is currently being followed in relation to the student support. The NTEU is making a separate submission on that policy, although we have also addressed it in a more general way in our submission to the legislation.

Question 5: University governance	Can the NTEU please outline any examples of poor university governance it has come across over the last 10 years?
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The NTEU is aware of many instances of poor or problematic university governance over many years. For example,

- As a sector, wage theft is well entrenched and rife. The NTEU's calculations of wage theft are over \$100 Million, with the University of Melbourne alone, for example, owing in unpaid wages an estimated \$31.6 million.
- This is in contrast to Australian VCs earning an average of \$900,000 annually, with Go8 VC average salaries of around \$1.3m. This has been coupled with an expansion in executive positions and increases in their remuneration – for example, in 2022, Monash University had no less than 14 individuals on packages exceeding \$500,000.
- The culture of university governing bodies and councils have significantly changed, commencing around the mid-2000s when then Education Minister Brendan Nelson encouraged institutions to adopt a corporate sector model for boards. At the same time, universities have been encouraged to pursue non-government forms of funding (including investment income and international education fee income) while the proportion of public funding has eroded.
- The push for more corporate style governance resulted in significant reductions of higher education staff on councils and an increase of business and industry representatives. We note that research on governance in the sector has found that less than a third of council members have actual educational expertise, while there is disproportionate representation from members of the consultancy industry.
- University governing boards operate opaquely. Most university councils are not required, and do not, publish council agendas and minutes. University staff and students are largely kept ignorant to the activity of their institutions governing council, including the methods by which executive salaries are set.
- Constitutional law professor Luke Beck notes that while current university councils have been created in the image of the company board, they are, in fact, far less accountable than their business counterparts. Beck has stated that: *"Shareholders, who are the 'members' of a company, get to elect a company's board of directors. By contrast, the 'members' of the university do not choose university councils."*
- *The Saturday Paper* recently reported the exorbitant funds expended on consultancy companies by universities, estimated at \$350 million nationally in 2022 alone. Consultants have been commonly used to justify institutional restructurings and loss of jobs.

NTEU has also been directly involved in several industrial matters relating to governance. Recent examples include:

- In 2019 Murdoch University unsuccessfully attempted to remove Associate Professor Gerd Schröder-Turk from his elected position representing academics on its University Senate and personally sue him in the Federal Court after his appearance on ABC's Four Corners Program commenting on Murdoch University's practices with respect to international students. That legal claim and the threat to remove the Associate Professor from the Senate was eventually withdrawn by Murdoch University as part of a legal settlement of the case in 2020.
- In September 2016, the NTEU settled a Federal Court case at the University of New England, after Professor Margaret Sims was accused of a standing conflict of interest in February 2015 by holding both union and council positions. Sims was already the staff-elected representative on council when elected NTEU Branch President. Significantly, she was re-elected as staff representative on council while the dispute was in progress. The joint statement released on 30 September 2016 settled that there was no assumed conflict of interest in holding both positions. Nonetheless, the case has highlighted the extent to which university managements are prepared to go to attack elected staff representation. It has also highlighted the extent of secrecy on university governing bodies.

The NTEU undertook research on university governance in 2016, which included an evaluation survey circulated on 21 September 2016, following an NTEU workshop for university council members who were also NTEU members.<sup>1</sup> Responses from the survey highlighted the following key concerns about governance arrangements at the relevant institution:

- that lack of transparency and accountability in governance protocols was common;
- that 'conflict of interest' assumptions limit legitimate questions from elected staff seeking to address issues of poor governance;
- that most councils exert pressure on individual members to conform to council decisions;
- that staff often feel isolated, so there is support for the building of networks amongst council members;
- that there is a role for legal and procedural skills in holding management to account during council meetings;
- that university council meetings present a unique opportunity to present the best interests of the university from a staff perspective, although in numerous instances this opportunity is only just being recognised by council members.

Specific responses to the evaluation survey reinforced the prevalence of secrecy and lack of transparency in university council meetings and processes:

- 75% said either the council agenda, papers or minutes were not entirely available to staff members. In a few instances, the agenda itself was not available. In other instances, minutes were redacted or presented as summaries, and sometimes took long periods before they became public.
- 37% said Council meetings were not open to observers. When observers were allowed, this was generally at the discretion of the Chancellor, and they would be excluded for confidential matters. In some instances, only invited presentations or staff at specific levels were able to observe meeting proceedings.
- 61% stated they could not report on council business to staff. There was significant variation across responses in relation to what could not be reported on. In most instances,

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<sup>1</sup> Jeannie Rea (2016) "Union members on university councils," *Advocate*, Vol.23, No.3, 22.

commercial-in-confidence or highly sensitive matters could not be reported upon. In some instances, restricted subject matter extended well beyond this domain.

- 38% said they were encouraged to communicate with other council members outside of council meetings. The majority of comments reflected that NTEU members were neither encouraged nor discouraged, however, a handful outlined they were discouraged from engaging other council members, either through the assignment of a mentor or through the intervention of the Chancellor. Others reported that as council members they were excluded from specific governance roles, such as membership of council sub-committees.
- 94% received an induction, although 76% said they did not receive training on meeting procedure. Some reported being intimidated by the Vice Chancellor or discouraged from meeting with other Councillors at induction. Some described their induction experience as limited to reading council papers and not about meeting procedure.
- 58% said they were encouraged to nominate for committees of council. Comments reinforced that there was a wide variety of responses in terms of committee participation, with staff participation common in some instances, and discouraged in others.

Information provided to the NTEU from individual members on university councils and boards since this data was collected indicate that there have not been substantial improvements.

We also note that the Fair Work Ombudsman was highly critical of poor university governance in its submission to the Universities Accord, stating (in addition to its observations around systemic underpayment of staff throughout the sector):

## *2. Poor governance and management oversight practices*

*Corporate governance arrangements that do not prioritise or consider workplace relations risks of compliance, often with little or no line of sight over how work is undertaken at the business level. For instance, inadequate reporting to and oversight by governing boards including audit and risk committees, resulting in a single point of failure.*

*No systems for identifying compliance risk, such as reporting on payroll issues of complaints to identify red flags, areas for audit or trends.*

The FWO also goes on to cite the Higher Education Standards Framework (Threshold Standards) around governance that apply to universities, and states that the FWO considers that universities should ensure that their corporate governance structures and models elevate workplace relations compliance to the same level as other duties in the standards. It also clearly states that it has observed issues directly related to 'inadequate corporate governance arrangements in the university sector' and makes 7 separate recommendations to the Accord Review on how this needs to be addressed.

The NTEU agrees with these observations of the FWO and considers governance issues to be a priority for the Universities Accord and Government. We look forward to participating in the Government's recently announced reforms to governance in the sector, and particularly in relation to universities becoming 'exemplary employers'. Governance plays a key role in improving our higher education workplaces.