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Dear Members of the Senate Standing Committees on Education and Employment,

Inquiry into the *Universities Accord (National Student Ombudsman) Bill 2024*

Introduction

I am pleased to provide this submission to the Senate Standing Committees on Education and Employment on the *Universities Accord (National Student Ombudsman) Bill 2024*.

I am a Senior Lecturer at the Faculty of Law, Monash University, and I research, publish and teach in the areas of criminal law and procedure with a specific focus on gender-based violence, including in the tertiary sector. My research applies comparative and socio-legal perspectives and draws on doctrinal and empirical research. My interest in this inquiry is in the policy and legal issues associated with the establishment of a National Student Ombudsman (NSO) and in particular, its jurisdiction to provide a trauma-informed complaints mechanism.

In this submission, I will be focussing on the proposed remit of the NSO, and the trauma informed principles that underpin it. I will also draw on the experience of the Office of the Independent Adjudicator (OIA) in the United Kingdom, a national complaints mechanism akin to the NSO, to foreshadow the challenges that can arise with a national system and learnings we can obtain from the OIA's operation. The purpose of this is to ensure that the establishment of the Australian NSO is best placed to achieve its purpose in providing

‘higher education students with access to an effective, trauma-informed escalated complaints mechanism.’¹

Jurisdiction

The NSO will have authority to handle complaints concerning higher education providers across Australia. This creates overlap with existing state and territory ombudsman bodies that already manage complaints related to university providers, vocational education, and training (VET) or technical education (TAFE) providers, or other applicable complaint processing agencies such as the Victorian Equal Opportunity and Human Rights Commission.

The Bill addresses this overlap through clause 21AJ(e) which provides a discretion to the NSO to refuse to handle a complaint if the matter has been, is being, or is set to be addressed by another Commonwealth entity, a state or territory ombudsman, or another relevant body.

This is intended to avoid duplication of effort and forum shopping by complainants. However, it is suggested that the current process articulated in clauses 21AJ and 21AE is not sufficient to address the overlap and for this reason it is proposed that the NSO have exclusive jurisdiction. Students would benefit from having a single, clear pathway for lodging complaints, eliminating the confusion of determining which body to approach. This streamlining of the process can reduce delays and make the experience less stressful. Further, exclusive jurisdiction would ensure that all complaints are handled under the same framework, promoting consistency in decision-making, which can improve trust in the system.

The risk of duplication of complaints or forum shopping (where students attempt to submit the same complaint to multiple bodies) would be eliminated. This would allow for more efficient handling of cases and reduce administrative burdens on both students and ombudsman offices.

Exclusive jurisdiction also allows the NSO to invest in appropriate training for staff to ensure that the complaints process is trauma-informed, that staff gain deep expertise in education sector regulations and issues, both of which can lead to better-informed decisions and more effective outcomes for students.

Finally, the need for referrals between ombudsman bodies or other complaint processes would be removed if the NSO was provided with exclusive jurisdiction. This would prevent

¹ The Parliament of the Commonwealth of Australia, House of Representatives, Explanatory Memorandum, *Universities Accord (National Student Ombudsman) Bill 2024* [5].

delays caused by transferring complaints between bodies and ensure that students' issues are resolved in a timely fashion.

Trauma-informed Principles

The Explanatory Memorandum makes clear that the NSO is to provide a 'trauma-informed escalated complaints mechanism.' Although the *Universities Accord (National Student Ombudsman) Bill 2024*, draws on trauma-informed principles, the legislation could be strengthened to ensure that the whole process is trauma-informed and places student experience and victim-survivor experience at the centre of the process. This section first considers what trauma-informed principles are, before analysing how the legislation can be more trauma-informed.

What is Trauma-Informed Practice?

Trauma-informed practice refers to a framework of working with individuals that recognises the potential impact of traumatic experiences on their lives and seeks to prevent further trauma. It operates around five core principles:

- Safety: Ensuring that individuals feel physically and emotionally secure in their interactions.
- Choice: Providing individuals with meaningful options and a voice in decisions that affect them.
- Collaboration: Engaging individuals in identifying their needs and involving them in finding solutions.
- Trust: Being transparent about what to expect, and consistently following through on promises and commitments.
- Empowerment: Acknowledging individuals' emotions and supporting them in making their own decisions.²

The legal system often involves individuals who have experienced trauma, whether due to the circumstances that brought them into the system or from their interactions with the system itself. The process of recounting traumatic events during for example, police interviews, court proceedings, or cross-examination can further exacerbate trauma for some individuals.³

²Annie McAnallen and Emma McGinnis, 'Trauma-Informed Practice and the Criminal Justice System: A Systematic Narrative Review' (2021) 18 *Irish Probation Journal* 109, 111.

³ Annie McAnallen and Emma McGinnis, 'Trauma-Informed Practice and the Criminal Justice System: A Systematic Narrative Review' (2021) 18 *Irish Probation Journal* 109, 109-112.

Trauma can impair an individual's ability to cope with stress, regulate emotions, or recall events accurately.⁴ In legal settings, where the ability to recall and discuss events is critical, trauma can hinder participation, which may affect the quality and reliability of the evidence or testimony provided. If the legal system does not account for the effects of trauma, there is a risk of misinterpreting a witness's behaviour, such as delayed reporting or difficulty in narrating events, as a lack of credibility. This could have serious implications for the administration of justice.

While it is not possible to eliminate all risks of re-traumatisation in the legal process, adopting trauma-informed practices can minimise the likelihood of causing further harm. By treating witnesses and parties in a trauma-sensitive manner, we can help them remain engaged with the legal process, ensure they participate more effectively, and improve the quality of their testimony and information. Not only does this benefit the individuals involved, but it also strengthens the overall integrity of the justice process.

A trauma-informed approach has the potential to significantly improve the experiences of those involved in legal processes, as well as enhance the overall effectiveness of the system. It recognises the pervasive nature of trauma, understands its impact on individuals, and promotes adjustments in practice to respond compassionately and appropriately. While certain legal constraints may limit the extent to which trauma-informed practices can be applied, there are still ample opportunities to make meaningful changes.

How Could the Legislation be better Trauma-Informed?

The *Universities Accord (National Student Ombudsman) Bill 2024* can be strengthened in a number of ways to ensure greater incorporation of trauma-informed principles. First, the legislation could include more specific guidelines on how the NSO should interact with complainants who have experienced trauma, such as allowing complainants to have a support person present during the complaint processes, or empowering complainants to control the pace and nature of the process. For example, allowing victim-survivors of trauma to have more control over their participation, including the option to pause or halt the process at any point to ensure their emotional and mental well-being.

A trauma-informed approach ensures a supportive environment and central to this is the integration of mental health resources. The Bill could require that the Ombudsman's office provide on-site or easily accessible trauma-informed mental health services, especially for those raising complaints connected to gender-based violence.

⁴ Substance Abuse and Mental Health Services Administration (SAMHSA) (2014), *Trauma-Informed Care in Behavioural Health Services*, Chapter 3: Understanding the Impact of Trauma.

A key trauma-informed principle is trust, and clear communication and transparency facilitate trust. The legislation should therefore emphasise the importance of transparent and clear communication with complainants, ensuring that all processes, options, and outcomes are explained in a way that is accessible and minimises potential confusion or anxiety.

The establishment of the NSO is ‘the first action of Action Plan Addressing Gender-based Violence in Higher Education.’⁵ It therefore appears that a driving force of the NSO is to provide an effective mechanism to address complaints concerning gender-based violence. In this regard, the Bill should make clear that a specialised unit within the Ombudsman’s office ought to be established. The unit should be specifically dedicated to hearing complaints involving trauma, gender-based violence, and mental health issues. This unit would consist of staff trained in trauma-informed practices that could work alongside other parts of the Ombudsman’s office.

The Bill mandates that investigations are conducted in private,⁶ with strong confidentiality provisions⁷ to ensure that sensitive information disclosed during complaints is protected. This is essential for trauma-informed care, as it minimises the potential for further harm or distress to individuals involved. However, further protections against re-traumatisation could be enshrined in the Bill. For example, the legislation could include specific provisions that limit the types of questions asked during hearings or mediation and prohibit practices that might force survivors to relive traumatic experiences unnecessarily.

Finally, trauma victim-survivors often experience difficulty navigating complex bureaucratic systems.⁸ The legislation should ensure that the complaint process is streamlined (see above for exclusive jurisdiction) and easy to understand, with minimal procedural hurdles. Plain language communication and simplified steps would make the process more accessible for all students, particularly those experiencing trauma.

By integrating these trauma-informed principles into the legislation, the complaint-handling process under the National Student Ombudsman could be more empathetic, accessible, and supportive of students, particularly those who have experienced trauma, are marginalised or vulnerable.

⁵ The Parliament of the Commonwealth of Australia, House of Representatives, Explanatory Memorandum, *Universities Accord (National Student Ombudsman) Bill 2024* [4].

⁶ *Universities Accord (National Student Ombudsman) Bill 2024* cl 21AU.

⁷ *Universities Accord (National Student Ombudsman) Bill 2024* cl 21AZC.

⁸ See for example, Jennifer McGreevey, *The Things That Women Reclaim: Healing, Agency, and Meaning-Making in a Sexual and Domestic Violence Survivor Community in London, England* (2019); Elizabeth Tibaduiza, Kelle Barrick, Paige Presler-Jur, Lilly Yu, Ruth Grossman, Julia Brinton, Hannah Feeney, Abigail Rinderle, Amanda Young and Jesenia Alonso, *Enhancing Response to Victims: A Formative Evaluation of OVC’s Law Enforcement-Based Victim Services (LEV) Program* (2024), US Department of Justice.

The UK Experience: Office of the Independent Adjudicator (OIA)

The Office of the Independent Adjudicator (OIA) in the United Kingdom, established in 2004, offers significant lessons for the creation of the NSO in Australia. The OIA is an independent body in the United Kingdom that is responsible for complaints from students about higher education providers. It was established in 2004 pursuant to the *Higher Education Act 2004* (UK) and is a central part of the system of accountability for higher education institution in the UK. The OIA handles complaints that are not satisfactorily resolved through a university's internal complaints procedure. Students must first exhaust the internal grievance mechanisms of their respective institutions before approaching the OIA. Key areas the OIA deals with include complaints about university policies and disciplinary decisions made by institutions, including those pertaining to complaints of gender-based violence. The OIA provides a valuable insight for establishing an effective, student-centred complaints handling system in higher education.

Since its establishment, the OIA has evolved to become more student-focused, recognising the emotional and financial challenges students face in bringing complaints. It introduced more accessible processes, including simpler complaint forms, more flexible timelines for filing complaints, and greater support for students navigating the system. The NSO should focus on student-centred processes, ensuring that complaint procedures are accessible, clear, and easy to navigate for students from diverse backgrounds. This includes offering support for students facing language or accessibility barriers.

In response to a growing number of complaints related to mental health and harassment, the OIA has developed specific guidelines and approaches to handle these sensitive cases. It has focused on creating more trauma-informed practices and ensuring that institutions take proper measures to support student welfare in these areas. Given the importance of mental health support and addressing complaints related to gender-based violence, the NSO should adopt trauma-informed practices from the outset. This includes offering mental health support for complainants and ensuring that the process is sensitive to the emotional and psychological impact of certain complaints.

One key lesson from the OIA's experience is the importance of fostering trust and awareness among students. The OIA has undertaken efforts to improve accessibility and awareness by working with student unions and creating more student-friendly resources. This demonstrates the need for ongoing engagement with stakeholders to build trust and make the adjudication process more user-friendly.

By considering these lessons from the OIA, Parliament can establish an NSO that not only resolves complaints effectively but also supports broader systemic change, ensuring a safer and more supportive environment for all students.

Conclusion

Thank you for considering my submission. I am happy to provide further information on any of the these, or associated issues.

Yours Sincerely,

Dr Natalia Antolak-Saper