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

Education and Employment Legislation Committee

Submission by the Acting Commonwealth Ombudsman, Penny McKay

1 October 2024

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Introduction and summary

I welcome the opportunity to provide a submission to the Senate Education and Employment Committee on the Universities Accord (National Student Ombudsman) Bill 2024 (the **Bill**).

Establishing the National Student Ombudsman (NSO) is the first action under the national *Action Plan Addressing Gender-based Violence in Higher Education* agreed to by all Education Ministers on 23 February 2024. As such, I recognise the important role the NSO would play in driving improvements in how the higher education sector handles complaints and in creating a more positive and safe student experience.

I welcome the establishment of the NSO as a new statutory function of the Office of the Commonwealth Ombudsman (the **Office**) and the Australian Government's commitment to provide \$19.4 million over two years from 2024-25 to establish the NSO. This includes funding for 40 full time equivalent staff in 2024-25, increasing to 62.5 full time equivalent staff in 2025-26.

The Bill would amend the *Ombudsman Act 1976* to establish the NSO as a new statutory function of the Office. The NSO would provide an effective, trauma-informed complaints mechanism for higher education students to use when they are dissatisfied with their higher education provider's response. The NSO's remit would be broad, enabling it to handle complaints about the actions of higher education providers including, for example, complaints about gender-based violence and reasonable adjustments for students with a disability.

Consistent with best practice, the NSO would implement a trauma-informed approach to complaint handling and offer alternative dispute resolution and restorative engagement processes, where appropriate. The NSO would promote best practice in complaint handling across the higher education sector, work closely with applicable regulators, and contribute to a stronger focus on safer and more positive student experiences and wellbeing.

To ensure the NSO will be operational by 1 February 2025, subject to passage of the Bill, significant groundwork has commenced within my Office. Specifically, a Project Management Office has been established, an SES Band 1 and SES Band 2 have been onboarded, Executive Level 2 appointments confirmed, and a national recruitment campaign for the remaining classifications is underway.



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The role of the Commonwealth Ombudsman

The purpose of the Office of the Commonwealth Ombudsman is to:

- provide assurance that the agencies and entities we oversee act with integrity and treat people fairly; and
- influence systemic improvement in government administration.

We aim to achieve our purpose by:

- independent and impartial reviewing of complaints and disclosures about government administrative action
- influencing government agencies to be accountable, lawful, fair, transparent, and responsive
- assisting people to resolve complaints about government administrative action, and
- providing a level of assurance that law enforcement, integrity and regulatory agencies are complying with legal requirements when using covert, intrusive and coercive powers.

My Office's core work is complaint handling. In the 2023–24 financial year, we received over 24,000 complaints within our existing jurisdictions. In dealing with a complaint, my Office is not empowered to make a fresh decision. However, we consider the way a decision was made and can make formal recommendations or suggestions about how the decision or process could be improved. Further, my Office has experience in working closely with regulators such as the Tertiary Education Quality and Standards Agency, the Australian Skills Quality Authority, the Australian Competition and Consumer Commission, and the Australian Prudential Regulation Authority as well as government departments. We meet on a regular basis to exchange information about provider activities in our current industry jurisdictions, raising potential breaches or other regulatory concerns. Where we notice serious breaches of regulatory obligations, we disclose that information to relevant agencies. In 2023–24, my Office produced 52 publications and made over 60 formal recommendations to influence systemic improvement in public administration. Ninety-seven per cent of those recommendations were accepted by agencies we oversee and we systematically follow-up and report on the implementation of those recommendations.



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The role of the NSO

The NSO would be independent, impartial and provide higher education students with access to an effective, trauma-informed escalated complaints mechanism. The NSO would be appropriately staffed with a well-trained, skilled and experienced workforce.

The primary role of the NSO would be to deal with individual higher education student complaints and to improve complaint handling by higher education providers. The functions of the NSO would include:

- resolving student complaints about actions taken by their higher education provider, including through alternative dispute resolution
- conducting investigations, both in response to complaints made by higher education students and on the NSO's own initiative into systemic issues
- offering students an opportunity to engage with providers in a restorative engagement conference about their complaint
- reporting about actions of higher education providers and making recommendations for improvement, and
- giving higher education providers advice and training about best practice for the handling of student complaints.

Establishment of the NSO

To successfully establish the NSO, my Office would draw on lessons learnt from implementing existing statutory functions such as the VET Student Loans Ombudsman (VSLO) and Overseas Students Ombudsman (OSO). My Office is experienced in dealing with student complaints and is therefore well positioned to successfully implement and administer the NSO. For example:

- In 2023–24, the VSLO finalised 217 complaints from students about VET providers that had been authorised to receive funding under Australian Government loan schemes and finalised 3,692 complaints about the VET FEE-HELP Program under the VET-FEE HELP Student Redress Measures. Since the inception of the Redress Measures Program in 2019 and up to September 2024, the VSLO has recommended total debts of \$226.91 million be recredited.



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- In 2023–24, the OSO received 822 complaints from prospective, current and former international students about private education providers and finalised 178 investigations.

Additionally, my Office has experience in delivering in trauma-informed services given its experience as the Defence Force Ombudsman (DFO) administering the Defence Abuse Reparation Scheme and Restorative Engagement Program. A trauma-informed approach to complaint handling will be critical given the NSO would be able to receive complaints concerning gender-based violence and undertake restorative engagement processes (discussed further below). In 2023–24, for example, the DFO finalised 1,067 reports of abuse under the Defence Abuse Reparation Scheme, made 634 recommendations for reparation and facilitated 41 restorative engagement conferences.

As the NSO is a new function, and there is limited historical data on the volume and nature of student complaints, it is difficult to accurately predict demand. This raises a risk that the NSO may experience higher than anticipated demand. To predict demand and initial funding parameters, we looked at the numbers of complaints received in existing state and territory ombudsman jurisdictions (where reported), and also the numbers of higher education students who experienced sexual assault and sexual harassment (as reported in the 2021 National Student Safety Survey). However, it is extremely hard to predict the possible volume of historic complaints that the NSO may receive, and there may also be an increase in demand due to the prominence of establishing a new statutory office. In my Office's experience, there tends to be an under-estimation of demand for new complaints functions and it is anticipated the NSO would be highly visible across the higher education sector. We will ensure that we are collecting accurate data on service demand to ensure sustainable funding beyond the initial two years of allocated funding.

Since January 2024, my staff have been actively involved in Government-led consultations on the NSO. Through this process we heard from stakeholders, including: students and student representative organisations such as student unions, higher education sector representatives, including vice chancellors and peak bodies, organisations that represent culturally and linguistically diverse people, First Nations people, people with a disability and LGBTQIA+ people, gender-based violence experts and victim-survivors and their advocates. We are carefully considering stakeholder feedback about what is required to deliver a safe and effective service. My Office would



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incorporate these views to the extent possible in the design of the NSO. Detailed in the section that follows are key service design elements raised by stakeholders and my Office's approach to their implementation.

Accessibility

It is critical that the NSO understands the barriers specific cohorts of students may face in making a complaint and ensuring the NSO is safe and accessible. The processes, procedures and engagement functions for the NSO would have a strong focus on accessibility. My Office would maximise opportunities for all students to lodge complaints with the NSO and is exploring establishing a number of communication channels including online complaint form submission, phone and face-to-face services. In the case of face-to-face services, we would not have a constant physical presence in all locations where there are students and institutions but have considered possible ways to be accessible in-person more widely. We are also exploring new channels such as online chat and options based on social media presence.

My Office recently commissioned market research to hear from a large cohort of students from diverse groups including students with disability, LGBTQIA+ students, First Nations students, culturally and linguistically diverse students and students in regional and remote locations. My Office intends to use this information to ensure the NSO services are accessible to all students.

Trauma-informed principles and restorative engagement

In providing safe, trauma-informed dispute resolution services, the NSO would draw on the skills and experience my Office has gained from the DFO's Restorative Engagement Program. This Program is designed to support those who report abuse to the DFO, to tell their personal story to a senior official from the Australian Defence Force (ADF) in a private facilitated meeting known as a restorative engagement conference. The meeting also provides the opportunity for the ADF to acknowledge and respond to the personal story of abuse, as well as take away learnings to inform improvements and cultural change in the ADF.

Since the first restorative engagement conference was held in August 2017 and through to September 2024, the DFO has facilitated 292 conferences. Surveys of reportees who participated in restorative engagement indicate:



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- 83% of respondents considered the program made a positive impact on their life
- 99% of respondents considered the program provided the opportunity to speak to their story of abuse in a way they were comfortable with
- 99% of respondents felt listened to during their conference, and
- 93% of respondents felt the ADF representee was accountable to their experience of abuse and responded with expressions of regret, sorrow or apology.

In the context of the NSO's work, my Office would ensure that regardless of the outcome, students who make a complaint feel safe and heard by both the NSO and their higher education provider throughout the process. A critical feature of the NSO's establishment will be hiring staff who can build trust with their complainants and are collaborative in their approach to assessing and pursuing dispute resolution options.

Stakeholders have told us that it is important for students to understand what a trauma informed service involves. To achieve this, the NSO would produce and disseminate through student preferred channels relevant guidance material through its education and outreach functions.

Communication, engagement and awareness raising

As a new function, significant early focus would be invested in ensuring the NSO is visible to students and the higher education sector. My Office understands the importance of establishing a clear and transparent approach to its services and communicating in clear, student-centric ways. It is committed to ensuring information about our services are available in foreign languages and First Nations languages.

My Office has appointed an SES Band 2 officer to be the full-time leader and public face of the NSO function and will also build a dedicated education and outreach function within the NSO. The team would:

- undertake outreach with the student population through a variety of channels including on-site and virtual forums
- engage with higher education providers to promote the role of the NSO
- develop educational material and resources to strengthen and support best practice complaints handling for higher education providers, and



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- develop digital content and media to raise awareness of the NSO, and the nature of complaints that are within its scope.

Working with state and territory Ombudsmen and other bodies

My Office has heard stakeholders' preference for a 'no wrong door' approach to accessing the NSO. To achieve this, we will design processes and procedures to resolve student complaints that are streamlined and collaborative to minimise the risk of duplicating roles or adding complexity.

My Office has commenced regular engagement with state and territory Ombudsmen to establish clear and effective information sharing protocols. These protocols would enable student complaints to transfer to the NSO efficiently and support a trauma-informed approach by preventing students from having to repeat their story multiple times. Establishing strong information sharing protocols would also assist the NSO to detect possible systemic issues in higher education and to report annually in a more informed and comprehensive manner on the volume and relevant trends in student complaints about higher education.

My Office is also establishing effective partnerships with the Tertiary Education Quality and Standards Agency and the Department of Education as the higher education sector regulators. My Office recognises this is critical to ensure that regulatory issues identified through student complaints can be escalated for action to maximise the opportunity to create systemic improvements to the quality of student experiences in higher education.

