



The Group of Eight Limited
ABN 98 089 687 990

GPO Box 139
Canberra ACT 2601
Level 4, 10 Moore Street
Canberra ACT 2600
Australia

t: +61 (0)2 5123 6700
www.go8.edu.au

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Senator Tony Sheldon
Chair, Senate Education and Employment Legislation Committee
Department of the Senate
PO Box 6100, Parliament House
CANBERRA ACT 2600
E: eec.sen@aph.gov.au

Dear Senator Sheldon

**Go8 submission to Senate Inquiry into the Universities Accord
(National Student Ombudsman) Bill 2024 [Provisions]**

In providing input to the *Universities Accord (National Student Ombudsman) Bill 2024 [Provisions]* (The Bill) the Group of Eight (Go8) states up front that it is absolutely committed to ensuring the safety, well-being and a quality experience for the 450,000 students across our universities.

The Go8 regards student safety as fundamental and non-negotiable to guarantee that every student receives the best possible experience at university. As such, the Go8 **supports the establishment of a National Student Ombudsman (NSO)** as an important initiative that will further enhance the safety of students.

It is important that we “hasten slowly” in implementing the NSO so that it comes into operation as quickly as possible but in way that truly serves students, is clear and easy for students to navigate, and protects academic decision making.

It is with the balance of these issues in mind that the Go8 makes the following recommendations for the improvement of the Bill.

Recommendations:

1. The NSO Bill and the National Higher Education Code to Prevent and Respond to Gender-Based Violence Bill be developed and introduced together – including with a policy impact analysis for each - to ensure a coherent and coordinated approach to addressing student safety, wellbeing and a quality educational experience.
2. There should be clarity on the delineation of roles between the NSO, Tertiary Education Quality and Standards Agency (TEQSA), and other regulatory bodies to avoid duplication and to streamline processes. The process needs to be unequivocally clear to ensure students can navigate complaints processes with ease and confidence.
3. Further sector consultation should be undertaken on the development of the NSO Rules to assist in providing greater clarity on distinguishing academic from non-academic elements of complaints.



4. Subsection 21AD(4) should be removed and the Minister required to amend the list of excluded actions in the Act itself, rather than have the power to do so by legislative instrument.
5. Further clarity is required for the higher education sector into what situations would warrant the NSO progressing an investigation without a student having completed their provider's internal complaints process.

Discussion

The Go8 notes the lack of an exposure draft and policy impact analysis for the legislation and the short period to provide feedback on the legislation as part of the Committee inquiry process.

Additionally, as indicated by the Minister for Education, the Hon Jason Clare MP, through the document tabled in the House of Representatives on 11 September 2024, the work of the NSO needs to be considered with the legislation to establish the National Higher Education Code to Prevent and Respond to Gender-based Violence.^[1]

The Minister for Education has also indicated that the NSO will have a cost-recovery model which is to be consulted on in 2025 and it is therefore important that a policy impact analysis is undertaken to ensure there is a proper understanding of the costs of the NSO and for institutions in engaging with the NSO.

Recommendation 1: The NSO Bill and the National Higher Education Code to Prevent and Respond to Gender-Based Violence Bill be developed and introduced together – including with a policy impact analysis for each - to ensure a coherent and coordinated approach to addressing student safety, wellbeing and a quality educational experience.

The regulatory relationship between the NSO, the Department of Education, TEQSA and State and Territory Ombudsman among other bodies, remains unclear. The Explanatory Memorandum references the sharing of information on regulatory breaches, which risks duplicating efforts and increasing bureaucracy, especially with the anticipated creation of a new specialist unit in the Department of Education to oversee the forthcoming National Code. Clarity on the delineation of roles and information-sharing protocols are vital to prevent unnecessary administrative burden on all parties.

These regulatory relationships need to be clarified for students so that they can navigate the complaints process with ease and confidence. Any regulatory overlap will increase bureaucracy and ultimately negatively impact students.

The Bill provides for the NSO to submit an investigation report to the Minister for Education for tabling in Parliament if a provider fails to act on recommendations. While similar powers are found in other Ombudsman functions, the Bill lacks clarity on the rights and avenues available to providers to review or appeal decisions. The Bill needs to include clear procedures for investigations, which often involve sensitive personal information about both students and staff to ensure confidentiality and privacy of individuals is guaranteed.

^[1] https://www.aph.gov.au/Parliamentary_Business/Tabled_Documents/7352



Recommendation 2: There should be clarity on the delineation of roles between the NSO, Tertiary Education Quality and Standards Agency (TEQSA), and other regulatory bodies to avoid duplication and to streamline processes. The process needs to be unequivocally clear to ensure students can navigate complaints processes with ease and confidence.

Section 21AZL allows for the Minister to make National Student Ombudsman Rules by legislative instrument. It is particularly important that any NSO Rules be developed in close consultation with the sector to ensure that they represent best-practice and are truly supportive of student wellbeing.

In particular, many complaints received by universities and higher education providers involve both academic and non-academic issues, making it challenging to separate the two, particularly in cases involving academic judgement disputes. The Explanatory Memorandum makes clear that academic judgement 'relies on the opinion of an academic' however there is limited detail on what constitutes academic judgement and consultation on the Rules could be used to clarify these issues.

Recommendation 3: Further sector consultation should be undertaken on the development of the NSO Rules to assist in providing greater clarity on distinguishing academic from non-academic elements of complaints.

Through Section 21AD(4) the Bill provides the Minister of Education with the power to override 'excluded actions' listed explicitly in the Bill by use of the National Student Ombudsman Rules.

The Go8 believes that it is critical for the operation of the NSO for the legislation to be clear on the excluded actions which lie beyond the remit of the NSO. This would also provide consistency with the fixed remit of other Commonwealth ombudsman legislation.

Recommendation 4: Remove Subsection 21AD(4) and require the Minister to amend the list of excluded actions in the Act itself, rather than have the power to do so by legislative instrument.

All Go8 members have strong policies and procedures in place to protect student safety and address complaints. Completing internal university processes for complaints will streamline the complaints system and ensure that the NSO can focus on cases that have been escalated appropriately. However, this will not be appropriate in all cases and so the Go8 therefore recommends that further consultation be undertaken in relation to what situations would warrant the NSO progressing an investigation without a student having completed their provider's internal complaints process.

Recommendation 5: Further clarity is required for the higher education sector into what situations would warrant the NSO progressing an investigation without a student having completed their provider's internal complaints process.

The Go8 fully supports the intent of The Bill to improve student welfare and ensure accountability within the higher education sector. We remain committed to working constructively with the Government and the Senate Committee to ensure the successful implementation of this important initiative.



I would be pleased to discuss the contents of this submission in further detail and can be contacted via the Go8 Chief Operating Officer, Tracey Wright

Yours sincerely

DR MATTHEW BROWN
DEPUTY CHIEF EXECUTIVE