

Australia/Israel & Jewish Affairs Council (AIJAC) submission to the Senate Standing Committee on Education and Employment's review into the *Universities Accord (National Student Ombudsman) Bill 2024*

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Recommendations

- AIJAC recommends that the Senate pass the *Universities Accord (National Student Ombudsman) Bill 2024*
- AIJAC recommends the Committee urges the Senate to pass the *Commission of Inquiry into Antisemitism at Australian Universities Bill 2024* to complement the establishment of the Ombudsman
- AIJAC recommends that the Ombudsman adopts the IHRA working definition of antisemitism and undertakes specific training on how modern antisemitism manifests

The Australia/Israel & Jewish Affairs Council (AIJAC) appreciates the opportunity to make a submission to the Senate Standing Committee on Education and Employment's Inquiry into the *Universities Accord (National Student Ombudsman) Bill 2024*.

AIJAC is the premier independent public affairs organisation for the Australian Jewish community and conveys the interests of the Australian Jewish community to government, media and other community organisations.

AIJAC is deeply concerned by the ongoing manifestations of antisemitism that have erupted on many Australian university campuses since the Hamas terror attack on Israel on 7 October 2023. This phenomenon is antithetical to Australian values and its multicultural ethos. It poses a genuine threat to the security of Jewish students and their ability to participate in academic life. It also undermines academic freedom—not least by demonstrating the inability or unwillingness of many universities to enforce their own codes of conduct.

AIJAC supports any mechanism that will help ameliorate this critical issue, and therefore welcomes the introduction to Parliament of this legislation.

While the Explanatory Memorandum states that the National Student Ombudsman will respond to complaints about a broad range of issues—from gender-based violence to reasonable adjustments for students living with disability—antisemitism and the experiences of Jewish students are not cited. This would likely fall under a broad banner of discrimination that likely would not usefully address antisemitism’s unique nature.

Thus, while the creation of the Ombudsman is a positive step, AIJAC’s position is that the Ombudsman is only one small part of the package of reforms that needs to take place to fight the scourge of antisemitism on campus.

AIJAC believes the best way to identify these reforms is through the establishment of a commission of inquiry into campus antisemitism, as stated in our submission to the Senate Standing Committee on Legal and Constitutional Affairs’ Inquiry into a Commission of Inquiry into Antisemitism at Australian Universities Bill 2024 (No. 2).¹

The role of the National Student Ombudsman

According to the *Universities Accord (National Student Ombudsman) Bill 2024* Explanatory Memorandum, the National Student Ombudsman will provide a national escalated complaints-handling mechanism for higher education students to complain about the actions of their higher education provider.

The Final Report of the Universities Accord Panel suggested the Ombudsman “should collect and regularly publish data on complaints made to universities and to the Ombudsman, supporting universities to undertake self-review and implement systemic improvements.”²

The Action Plan to address gender-based violence in universities provided more details:

In consultation with the states and territories, the Commonwealth should establish a new National Student Ombudsman with investigative and dispute resolution powers to ensure domestic and international higher education students have an effective, trauma-informed complaints mechanism to use when they are not satisfied by their provider’s response. The Ombudsman should be centred on student voices and needs, and be effective, accessible, and transparent through the full complaints cycle. In designing the Ombudsman, consideration should be given to ensuring it can:

- Play a role in promoting best practice relating to complaints handling and student experience

¹ <https://www.aph.gov.au/DocumentStore.ashx?id=7117672e-b4e5-4a88-84d8-96c9b6b9c748&subId=762242>

² Australian Universities Accord Final Report, December 2023, p. 171, <https://www.education.gov.au/download/17990/australian-universities-accord-final-report-document/36760/australian-universities-accord-final-report/pdf>

- Have the power to handle student complaints about their providers' policies and processes, including on student safety, welfare, course administration, HECS administration, reasonable adjustments for students, and other matters
- Have authority to consider whether the actions taken by providers are wrong, unjust, unlawful, discriminatory or unfair, and whether they meet the expectations of providers established through regulation
- Have the ability to investigate if a provider is acting unreasonably or there are unreasonable delays in responding to a student's complaint, or where the provider is otherwise failing to follow its own policies or meet regulatory expectations
- Have the power to recommend that the Vice-Chancellor, Chief Executive or leader of a provider takes specific administrative steps to resolve complaints, such as:
 - Refunding or re-crediting fees, and/or
 - Making changes to provider policies, practices and processes
- Offer a restorative engagement process between student and provider where appropriate
- Provide an annual report to Parliament, through the Minister, that will report on numbers and types of complaints, the actions of providers in response to recommendations, and wider opportunities to improve student experience
- Can share information with, and receive information from, relevant regulators to identify and respond to systemic risk, provide the basis for further compliance action if necessary, and ensure accountability
- Be the primary escalated complaints authority for students in relation to their providers, with jurisdictions agreeing in principle to reflect the Ombudsman in their own arrangements and refer students with complaints where relevant
- Have no role in relation to academic decision-making by providers.³

Benefits of the Ombudsman

The establishment of the Ombudsman will certainly benefit students. The Ombudsman will come to understand the strengths and weaknesses of university complaints processes and will, over time, arrive at a position to recommend a list of best practices.

That it will also publicise particularly poor university responses is a benefit, as this will prompt universities to improve their responses to student complaints.

That the Ombudsman's investigations will be discreet is also a benefit. As below, concerns about impacts on grades is a reason that students have not submitted complaints to universities. Indeed, therein lies a larger potential benefit of the Ombudsman: AIJAC understands that the way universities become aware of discriminatory or abusive actions on campus is through their complaints mechanism. When students, for numerous different reasons (see below), don't make a complaint, universities

³ Draft Proposal: Addressing gender-based violence in higher education, Department of Education, <https://www.education.gov.au/download/17423/draft-action-plan-addressing-gender-based-violence-higher-education-publication/35343/document/pdf>, p. 6

remain unaware of the situation on their campus. Were the Ombudsman to be an avenue for a student to make a report about a situation about which, for various reasons, the student is unwilling to submit a complaint to their university, the Ombudsman would be able to advise the university in question. This is especially the situation if numerous complaints/reports about the same issue were made to the Ombudsman from multiple parties.

Possible weaknesses of the Ombudsman

AIJAC has two main concerns; that the Ombudsman is seen as a panacea for poor university complaints processes; and that the Ombudsman will not understand how modern antisemitism manifests.

The Ombudsman is not a panacea

AIJAC's first concern is not with the Ombudsman's envisioned role—which AIJAC welcomes—but in the possibility that the establishment of the Ombudsman will be seen as a panacea to addressing the situation on campuses.

While a benefit of the Ombudsman will be the accumulation of data and a whole-of-sector understanding of the strengths and weaknesses of complaints mechanisms, this accumulation will take time. AIJAC contends that the problem of antisemitism on Australian campuses is acute and needs to be addressed quickly.

Ultimately, an ombudsman is a review mechanism designed to ensure that a well-functioning system continues to operate effectively within its mandate, and to highlight ways to improve and/or become more efficient. The current complaints mechanisms at Australian universities are not well-functioning, and need to be substantially reformed before or concurrent to the establishment of the Ombudsman.

In addition, there are serious concerns about university handling of complaints about antisemitism and other forms of racism and discrimination that have been made by university staff, rather than students. A separate mechanism to address these deficiencies should also be considered.

The experience of Jewish students

Australian Jewry is facing a crisis of antisemitism at universities. This is impacting Jewish students in many ways, including how they express their Jewish identity, their willingness to attend classes and take part in student campus activities, their academic freedom and more. The experience of Jewish students on campus in the wake of the 7 October 2023 Hamas massacre of Israelis has been detailed in the many submissions made to the Senate Standing Committee on Legal and Constitutional Affairs' Inquiry into a

Commission of Inquiry into Antisemitism at Australian Universities Bill 2024 (No. 2).⁴ Some of those experiences are summarised in AIJAC's submission to the inquiry.⁵

However, the inability or unwillingness of the university sector to address the concerns of Jewish students in the face of antisemitism predates the 7 October massacre.

In 2023, the Zionist Federation of Australia and the Australasian Union of Jewish Students commissioned a survey of Australian Jewish university students. It was published in July 2023. The survey revealed that two-thirds of Jewish university students had experienced antisemitism on campus, with many avoiding campus or hiding their Jewish identity as a result.⁶ The relevance of the survey to this submission is the data relating to complaints.

According to the report, 85% of Jewish students didn't submit a complaint after the most impactful incident of antisemitism in the previous 12 months. Asked why they didn't submit a complaint, 61% responded that it wouldn't make a difference, and 48% that the university wouldn't take it seriously. Smaller numbers reflected worries about confidentiality (13%), that they wouldn't be believed (12%) or concerns their grades would be affected (10%).⁷

In addition, 61% of the 15% of students who did make a complaint were dissatisfied by the outcome.

A commission of inquiry—the legislation for which is currently before the Senate—will likely examine what policies universities enacted in the face of these alarming statistics (if any), and which policies worked. It will also likely look closely at the complaints mechanisms of universities.

While the commission of inquiry will be focused on antisemitism and the experiences of Jewish students on campus over the past 12 months, its outcome in terms of complaints mechanisms will have practical benefits for all students facing discriminatory or abusive behaviour on campus.

For instance, were the commission of inquiry to suggest a national best practice complaints process, this would complement the establishment of the Ombudsman.

⁴ Inquiry into a Commission of Inquiry into Antisemitism at Australian Universities Bill 2024 (No. 2): Submissions, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/AntisemitismBill/Submissions

⁵ AIJAC's Submission to the Senate Legal and Constitutional Affairs Legislation Committee's Inquiry regarding the Commission of Inquiry into Antisemitism at Australian Universities Bill 2024 (No. 2), August 2024, <https://www.aph.gov.au/DocumentStore.ashx?id=7117672e-b4e5-4a88-84d8-96c9b6b9c748&subId=762242>

⁶ The full survey report can be seen at <https://www.zfa.com.au/wp-content/uploads/2023/08/Jewish-University-Experience-Survey.pdf>.

⁷ Australian Jewish University Experience Survey: Key results, <https://www.zfa.com.au/wp-content/uploads/2023/08/Survey-summary.pdf>

AIJAC therefore recommends that the Committee urges the Senate to pass the *Commission of Inquiry into Antisemitism at Australian Universities Bill 2024* to complement the establishment of the Ombudsman.

The Ombudsman might not understand how modern antisemitism manifests

As above, the Ombudsman is envisioned to have an “effective, trauma-informed complaints mechanism”.

AIJAC contends that it is vital that the Ombudsman understands how modern antisemitism manifests. While often grouped together with other forms of racism, antisemitism is multifaceted. It can, in short, manifest as discrimination against Jews for reasons of race or religion, as discrimination against Jews based on a worldview that places conspiracy theories about alleged Jewish power and domination at its centre, and also as discrimination against Jews by holding individual Jews responsible for the perceived crimes of the state of Israel.

The Australian Government and most Australian states, along with AIJAC and the representative organisations of the Australian Jewish community, believe that the IHRA working definition of antisemitism⁸ best describes how modern antisemitism manifests.

AIJAC urges the Committee to ensure that the Ombudsman adopts the IHRA working definition of antisemitism as a tool to understanding how modern antisemitism manifests. Further, AIJAC urges the Committee to ensure that the Ombudsman undergoes training into how modern antisemitism manifests. This will help the Ombudsman fulfil its mandate to provide an effective, trauma-informed complaints mechanism.

Failure to understand how antisemitism manifests will result in the Ombudsman not recognising discrimination against Jewish students when it occurs on campus.

Recommendations

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⁸ Working definition of antisemitism, International Holocaust Remembrance Alliance, <https://holocaustremembrance.com/resources/working-definition-antisemitism>

- AIJAC recommends that the Ombudsman adopts the IHRA working definition of antisemitism and undertakes specific training on how modern antisemitism manifests