



1 October 2024

Senator Tony Sheldon
Chair
Senate Standing Committee on Education and Employment
Parliament House
Canberra ACT 2600

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Dear Chair

Subject: *Universities Accord (National Student Ombudsman) Bill 2024*

The University of Melbourne welcomes the opportunity to contribute to the inquiry into the *Universities Accord (National Student Ombudsman) Bill 2024*. The University broadly welcomes the Bill, noting that the new Ombudsman will play an important role for reviewing student complaints and an educative function, encouraging institutions to adopt best practice policies and processes. The University is also pleased to see that the Bill clarifies that the Ombudsman cannot conduct appeals or merits review of a decision. However, the University is concerned about some aspects of the Bill, including potential regulatory overlap, the lack of clarity around its scope, and inclusion of some historical actions.

Existing University processes

By way of background, the University's student complaints process was designed with reference to the [Victorian Ombudsman's good practice guide](#). The service is delivered in a manner that is trauma-informed and is underpinned by principles of procedural fairness and natural justice by staff who are committed to continuous review and improvement. In 2023, the Academic Registrar's office received around 700 student complaints, including student conduct complaints, with fewer than five of these pursued through mechanisms outside of the University (e.g. via the Ombudsman, Human Rights Commission or legal avenues).

The complaint handling system is designed to improve accountability, service delivery and business processes, and to promote fair and reasonable decision-making, resulting in an improved student experience. It is subject to a continuous internal review process, with a commitment to fairness, transparency, responsiveness, and accountability in complaint handling.

Scope

The Bill provides the Ombudsman with very broad scope. It will consider complaints about most actions, including student safety and welfare, course administration, teaching provision and facilities, disciplinary processes and reasonable adjustments for students with disability or those experiencing special circumstances. The term "higher education student" is also very broadly defined, including current, prospective and former students in any course of study with a higher education provider, including non-award courses and short courses. It also includes complaints brought "(b) on behalf of a higher education student of the provider". This leaves the category of complainants wide open.



This broad scope means there is significant overlap with existing organisations. For example, the Victorian Ombudsman receives complaints from university students about a range of matters, including enrolments and exclusion, applications for special consideration, and disciplinary, complaint and appeal procedures. The Bill includes transfer and referral provisions (section 21AH), but it is not clear how this will operate in practice.

Recommendation: The University recommends that the Bill clearly outline the Ombudsman’s relationship to, and distinction from, the functions of the Victorian Ombudsman, Victorian Human Rights and Equal Opportunity Commission, Australian Human Rights Commission, and TEQSA.

Recommendation: The University recommends that the Bill define who might bring complaints on behalf of a higher education student.

Additionally, the Bill grants the Minister broad powers to change the Ombudsman’s scope, prescribing actions that are excluded or not excluded through the National Student Ombudsman Rules. Importantly, the Rules are a disallowable legislative instrument. The Explanatory Memorandum states that, “This provision gives additional flexibility in the event that the definition of excluded action was inappropriately limiting the matters that students could complain about or affecting the National Student Ombudsman’s ability to provide an effective complaint handling process” (p. 24). However, the breadth of the Minister’s proposed delegated power has not been tested and there is insufficient time for consultation about the rules given the Bill’s commencement date.

Recommendation: The University recommends that the Committee consider whether the scope of this delegation of power is appropriate.

Historical actions

Section 15 of the Bill provides that the Ombudsman can consider complaints relating to actions taken before or after the commencement date. It is appropriate to include historical actions as they relate to student safety and welfare to ensure the continued development of best practice, including a trauma-informed approach. For example, under the University’s [Sexual Misconduct Prevention and Response Policy](#), a person can make a disclosure or complaint about a current or past experience of sexual misconduct. However, it would be sensible to exclude some categories of historical actions (for example, course administration and teaching provision and facilities) to ensure the Ombudsman’s resources are targeted and prioritised appropriately.

Recommendation: The University recommends that the Committee consider excluding historical actions from the Ombudsman’s scope, except where they relate to student safety and welfare.

Academic judgment

Section 21AD excludes certain actions from the Ombudsman’s scope, such as any action involving the exercise of “academic judgment”. This term is not defined, although the Explanatory Memorandum lists examples, such as the content of a curriculum and teaching and assessment methods (p. 23). It argues that matters such as reasonable adjustments, provision and standard of teaching facilities, and disciplinary and misconduct procedures would not be considered matters requiring academic judgment and could be within scope. This boundary is ambiguous, particularly as it relates to academic misconduct procedures, which are often determined with reference to individual circumstances, parity of treatment of students and the demands of ensuring academic standards.

Recommendation: The University recommends that the Bill include a definition of “academic judgment” to ensure academic freedom and academic judgements about education and research are protected.

Complainant’s protection from re-traumatisation

While the Bill provides protections for complainants, there are no protections for victim-survivors of gender-based violence, discrimination, and/or racism (given that we understand from the Minister’s public statements that the



latter will also be included) from potential re-traumatisation, where a perpetrator **or an alleged perpetrator** makes a complaint to the Ombudsman.

Recommendation: The University recommends that the Bill specify that victim-survivors will not be required to participate in processes or provide information where a perpetrator or an alleged perpetrator submits a complaint about a provider's actions.

Offence provisions

Under the Bill, the Ombudsman can direct a higher education provider subject to a complaint (or an officer of that provider) to participate in an alternative dispute resolution process. It is an offence if the person named in the direction "fails to participate in part or all" of the process, provided the other party attends, or was willing to attend (section 21AN). It is not clear if this failure to participate refers to attendance or good faith engagement in the process. While providers ought to participate in these processes, this offence seems unnecessary. If a person fails to participate, the Ombudsman could instead note this in its annual or other published reports. This would better align with the Ombudsman's response to providers that do not implement its recommendations.

Recommendation: The University recommends that the Committee review the offence provisions of the Bill to ensure they are appropriate and aligned with equivalent Ombudsman powers.

National Higher Education Code to Prevent and Respond to Gender-based Violence

In his second reading speech, the Education Minister outlined his intention to introduce a second piece of legislation to support the work of the Ombudsman by implementing the National Higher Education Code to Prevent and Respond to Gender-based Violence. The Minister tabled a document setting out how the National Code will work, but the sector has not yet seen the legislation.

Recommendation: The University recommends that the Government share an exposure draft of the National Code legislation so that the legislation may be considered together with this Bill.

Additional guidance

The University is pleased to see clarification that student accommodation will be included in the Ombudsman's remit where it is owned and/or operated by the provider. The University would welcome guidance and support from the Ombudsman, once established, regarding university-affiliated student clubs and societies and affiliated colleges, noting the University's limited power to address issues within these organisations.

Yours sincerely

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