



# **IHEA SUBMISSION**

## **SENATE INQUIRY INTO THE UNIVERSITIES ACCORD (NATIONAL STUDENT OMBUDSMAN) BILL 2024**

1 October 2024

## IHEA Submission

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

Independent Higher Education Australia (IHEA) welcomes the Senate Inquiry into the Universities Accord (Student Support and Other Measures) Bill 2024 (the Bill), for which submissions are due by 1 October 2024. We also refer to our previous submissions to the Department of Education of 30 January 2024 and 5 July 2024 regarding the establishment of the National Student Ombudsman.

#### Introduction

#### Schedule 1, Part 1, Division 1 – Introduction, Section 21AA Simplified outline of this Part

*The National Student Ombudsman’s main functions are:*

- (a) to deal with complaints about actions taken by higher education providers; and*
- (b) to conduct investigations into actions taken by higher education providers, on the National Student Ombudsman’s own initiative; and*
- (c) to give higher education providers advice and training on handling complaints.*

*However, the National Student Ombudsman cannot deal with complaints about, or investigate, certain kinds of actions (called excluded actions) taken by higher education providers.*

*Complaints can be made to the National Student Ombudsman by higher education students of higher education providers.*

*The National Student Ombudsman can deal with complaints by referring the complaint to the higher education provider for investigation, by using alternative dispute resolution processes or restorative engagement processes or by conducting an investigation.*

*Following an investigation, the National Student Ombudsman can give a report to a higher education provider with recommendations. The National Student Ombudsman will also prepare annual reports and, as necessary, periodic reports of the operations of the National Student Ombudsman.*

*The National Student Ombudsman has information gathering powers under this Part and other powers under this Act (as applied by this Part).*

IHEA supports the establishment of the NSO to consider complaints from domestic students. Our view is that the NSO should be the agency that handles complaints from students about the administrative actions of their higher education provider where they are not satisfied with their provider’s response. The NSO should develop clear principles and guidelines that outline their functions, make them publicly available and ensure they are up to date. Any recommendations made by the NSO should build in a clear review and appeals processes. This should be included in the legislation as a requirement of the NSO.

It is imperative that the investigation of a complaint by the NSO occurs after a student has exhausted a provider's internal process, and if they remain dissatisfied. It would not be appropriate for the NSO to consider a complaint ahead of the internal process being completed, as this will significantly impact the streamlined operations that are proposed. As such, IHEA recommends that the NSO develop guidance and criteria that is made available to students and providers that outlines the basis for the NSO investigating/not investigating a complaint. This requirement should be outlined in the Bill to provide clarity and certainty to students and providers.

It will be imperative to embed in the NSO's role that it operates openly, independently, impartially and ensure that procedural fairness is at the centre of its operations. The legislation needs to require the NSO to develop a charter that outlines the principles it will follow and adopt in its operations.

IHEA believes that the role and operation of the Ombudsman should follow these key principles, which should be reflected in a charter and relevant operating protocols:

- Be open, independent and transparent.
- Operate and investigate fairly and without pre-judgement or prejudice.
- Develop and publish clear processes and timelines.
- Build in appropriate review and appeal mechanisms.
- Publicly report on the number and nature of complaints and decisions by the Ombudsman. This should occur as de-identified information.
- Require students to have first exhausted their institution's internal procedures for grievances, complaints and appeals prior to the escalation of their unresolved issue to the NSO.

The NSO does provide an opportunity to streamline existing complaints handling arrangements. For example, independent higher education providers are required, for Tertiary Education Quality and Standards Agency (TEQSA) registration under the *TEQSA Act Higher Education Standards Framework (Threshold Standards) 2021 (HESF)*, to maintain procedures for resolving grievances of current and prospective students about any aspect of their experience with the higher education provider, its agents, or related parties. Further, the HESF requires institutions to have internal procedures to resolve grievances and provision for review by an appropriate independent third party if internal processes fail to resolve a grievance (*HESF Standards 2.4*).

In considering this Bill and finalising the model for the NSO, it needs to be confirmed that TEQSA will be satisfied that the role of the NSO meets the requirement of an independent third party for the purposes of the HESF. While there is a presumption that it would satisfy this requirement, this clarity and reassurance should be sought from TEQSA and communicated to providers. If it is not the case, the NSO model should be adapted to ensure that it will provide a streamlined pathway for escalation of complaints, and not create additional set of requirements for complaints handling.

In terms of streamlining, the NSO should subsume all other complaint handling arrangements undertaken by state and territory ombudsman. Ideally, any tertiary student, whether domestic or international, should be able to access the services of a joined up NSO.

It is noted that under Chapter 3 of the Constitution, an executive body, such as the Commonwealth Ombudsman, cannot finally determine disputes between parties, which is ultimately a function that is exclusively reserved to Courts. As such, the NSO will not be able to finally resolve a dispute between higher education providers (whether that be public universities or independent higher education higher education providers) and a student. In the case of the NSO, we understand that enforcement of NSO decisions that relate to compliance with the National Higher Education Code to Prevent and Respond to Gender-based Violence (National Code)) will occur by a specialist Unit in DoE. However, if any systemic issues are raised by the NSO, these may be considered by TEQSA. As such, the NSO should work closely with DoE and TEQSA to ensure that all organisations have clarity about their functions and their interconnectedness with each other.

With the NSO proposed to receive complaints from 1 February 2025, subject to the passage of legislation, a targeted campaign to raise awareness with providers and student groups should commence as soon as possible, to ensure that all parties are aware of the functions of the NSO.

### **Schedule 1, Part 1, Division 2—Establishment and functions, Section 21AC Functions of National Student Ombudsman**

*The National Student Ombudsman has the following functions:*

- (c) *reporting and making recommendations under Division 5 of this Part;*

- (d) *giving higher education providers advice and training about the best practice for the handling of complaints made by, or on behalf of, higher education students.*

It is understood that enforcement of NSO decisions that relate to compliance with the (National Code) will occur by a specialist Unit in DoE, whereas TEQSA may consider any other systemic issues that are raised. However, it is worth noting that the specialist Unit in DoE won't itself accept complaints. Given there are multiple agencies involved, clarity around each's role should be explained in the Bill.

As reflected under Section 21AC(d), IHEA believes that the outreach and education function of the NSO is of great importance. IHEA supports an educational and learning approach and believes that the NSO is well placed to share learnings with providers and to build capacity in the sector. This should take the form of webinars and workshops, case studies, frequently asked questions and other guidance materials, as appropriate and needed. IHEA strongly supports the NSO communicating its expectations and details about its role with providers, which should commence as soon as possible.

### **Schedule 1, Part 1, Division 3 – Complaints, Subdivision A—Complaints to the National Student Ombudsman, Section 21AD Making a complaint**

#### Who can make a complaint

- (1) *A complaint may be made to the National Student Ombudsman against a higher education provider:*
- (a) *by a higher education student of the provider; or*
  - (b) *on behalf of a higher education student of the provider.*

#### Grounds for complaint

- (2) *The complaint may be about any action (other than an excluded action) taken by a higher education provider.*
- (3) *Each of the following actions taken by a higher education provider is an **excluded action**:*
- (a) *any action taken with respect to a person employed by a higher education provider, being action taken in relation to that employment;*
  - (b) *any action taken with respect to the appointment of a person to an office of a higher education provider;*
  - (c) *any action to the extent that the action involves the exercise of academic judgement;*
  - (d) *any action to the extent that the action is taken with respect to:*
    - (i) *a VET course; or*
    - (ii) *a student who is not a higher education student of the provider;*
  - (e) *any other kind of action prescribed by the National Student Ombudsman Rules for the purposes of this paragraph.*
- (4) *Despite subsection (3), an action is not an **excluded action** if the action is an action of a kind prescribed by the National Student Ombudsman Rules for the purposes of this subsection.*

#### Who can make a complaint

It is understood that the NSO will accept:

- Complaints made on behalf of another person with their consent.
- Anonymous complaints or complaints made under a pseudonym (Page 22, Explanatory Memorandum to the Bill).

- Group complaints.
- Historical complaints.

#### *Anonymous complaints*

IHEA believes that anonymous complaints should be an excluded action (see *Scope of complaints to be investigated and excluded* below). However, if the NSO is to consider anonymous complaints, it will need to develop appropriate arrangements i.e. criteria and guidance to ensure the integrity and genuineness of such complaints. There may be very good reasons why a complainant may wish to remain anonymous, but anonymity may also provide a vehicle for making a vexatious and non-genuine complaint. Clarity around how anonymous complaints will be handled will be important so that the NSO can focus its resources to addressing genuine complaints. It is essential, for instance, that providers are afforded an opportunity to challenge the preservation of a student's anonymity if the provider believes there are sufficient grounds for the student's identity to be disclosed.

Rather than progressing an anonymous complaint to the NSO, there may be services other than the NSO that can be accessed that will be more appropriate to the victim's immediate needs, for example, through End Rape on Campus (EROC); National Association of Services Against Sexual Violence (NASASV); and Our Watch Institute.

#### *Grounds for a complaint*

Higher education students will be able to complain to the National Student Ombudsman about a broad range of issues related to their studies or student life, including:

- Student safety and welfare, including gender-based violence.
- Course administration, such as timeliness and accuracy of information provided to students.
- Teaching provision and facilities, such as sufficiency of staffing to meet educational, academic and administrative needs of students.
- Disciplinary processes, such as procedures to address misconduct.
- Reasonable adjustments for students with disability or experiencing special circumstances.

It is understood that there will be some types of complaints that the National Student Ombudsman is excluded from handling, this includes complaints about:

- Actions that rely on academic judgement (such as a grade received).
- Actions relating to a vocational education and training (VET) course.
- Actions relating to employment.

#### *Scope of complaints to be investigated and excluded*

Excluded action should include those complaints that are best considered elsewhere and not by the NSO and this should be clearly identified in the Bill and not able to be revisited by the Minister through the tabling of NSO Rules as a legislative instrument (see *Determination of excluded actions* section below).

While Section 21AD(3)(c) specifically excludes a complaint with respect to any action that involves the exercise of academic judgement, there are some potential overlaps with the roles of other agencies, in particular, TEQSA. For example, in relation to receiving complaints regarding "teaching provisions and facilities, such as sufficiency of staffing to meet educational, academic and administrative needs of students" (page 22, Explanatory memorandum to the Bill). Under the Higher Education Standards Framework, in particular Domain 3, TEQSA expects higher education providers to demonstrate sufficient staffing to meet the educational, academic support, administrative, and access needs of students undertaking a course of study. Further, the staffing Standards ensure that the level and type of staffing align with the nature and level of the course and the students' needs, which

includes individual student access to staff beyond formal teaching. There is potential overlap between the proposed NSO requirements and that of TEQSA, which has the potential to undermine the NSO's ambitions of a streamlined process for escalating complaints that avoids and removes duplication.

Further, the NSO is also proposed to receive complaints regarding "reasonable adjustments, for students living with a disability or experiencing special circumstances" (page 22, Explanatory memorandum to the Bill), which also intersects with sections 2.2 (Diversity and Equity) and 2.3 (Safety and Wellbeing), which may also represent an area of overlap between the NSO and TEQSA. These are examples of where overlap is possible, and so greater clarity about how this duplication will be addressed will be important and fundamental to the NSO achieving its objectives.

IHEA believes that the legislation should clearly articulate that the NSO will not consider issues that sit within other agencies, such as DoE and TEQSA. In addition, the NSO should work with other agencies such as TEQSA and DoE and prepare a document that identifies the different functions and roles of each agency, including examples, and with which agency responsibility and oversight sits with. The above examples would be ideal for identifying how TEQSA and the NSO will resolve potential overlap and duplication, which must be avoided.

#### *Determination of excluded actions*

While this section of the Bill refers to actions the NSO can take as well as excluded actions that are not covered by the NSO, it also states that an action is not excluded if it is prescribed in the NSO Rules (Section 21 AD(4)). This is concerning that the expectations set out in this Bill could be undermined or overturned by Rules that are yet to be developed, and which are likely to be a legislative instrument tabled by the Minister. This would give the Minister an added level of discretion that goes outside the scope of the Bill and potentially to go beyond what is stated in the Bill to expand on the matters a student can complain to the NSO about.

IHEA believes the NSO Rules should not be used to extend the scope of the NSO beyond what is stated in the Act. There needs to be clarity for the higher education sector about the role of the NSO and where this fits with other agencies such as TEQSA. For example, Bill does not permit student complaints 'to the extent that the action involves the exercise of academic judgment' as outlined above Section 21AD(3)(c). A significant question is why the development of NSO Rules may allow the inclusion of actions that are excluded by this Bill. If this was to occur, it would result in a lack of clarity and confidence in the NSO and potentially shifting scope, which otherwise sits with TEQSA. This would be an undesirable and concerning outcome that will create confusion, complexity and likely overlap with the responsibility of other agencies.. As such, in the interests of clarity and transparency, we recommend that Section 21AD(4) be removed from the Bill.

The exclusion of VET students to be able to make a complaint to the NSO is somewhat confusing and anomalous. As outlined on page 4 of the Bill, an eligible course of study for a student to be a complainant includes, for example, an enabling course and a microcredential course. Given the inclusion of students from some non-higher education courses it is unclear why VET students have been overlooked. IHEA strongly encourages that consideration be given to taking a whole of tertiary approach through the inclusion of a process for students in the VET sector, as a priority. Already students can make complaints in relation to the Commonwealth funded VET Student Loans program, so it is imperative that the operation of the Ombudsman will be sufficiently connected and integrated, particularly as some higher education providers are also VET providers. We urge for this more holistic and integrated approach to occur as a matter of priority.

#### *Interaction with the Overseas Students' Ombudsman*

Given the Commonwealth Ombudsman for Overseas Students is already in operation, it will be important for the NSO to work in a connected and joined up way with the Overseas Students' Ombudsman. Consideration should be given to integrating the functions in the Commonwealth Ombudsman for considering complaints from domestic and international students to ensure consistency of decision making, as in most cases both domestic and international students are co-located in a provider. In the event, for example, that the Overseas Students' Ombudsman finds in favour of the provider following the escalation of a student's complaint, there must be



mechanisms in place that prevent the student from further escalating their complaint to the NSO since this would inordinately consume the resources of the Commonwealth Ombudsman and the provider. In other words, the final stage of escalation must be either the Overseas Students' Ombudsman or the NSO but not both. This needs to be clearly articulated under Section 21AD of the Bill.

Further, in finalising the NSO, there is an opportunity to reflect on the operations of the Overseas Students' Ombudsman and identify areas that should be considered and addressed based on current experience. An example of this is communication and engagement with providers regarding complaints. Currently, this communication can be variable. For example, the Overseas Students' Ombudsman sometimes advises a provider of a complaint that they have dismissed out of hand, but sometimes it does not. Similarly, providers are sometimes advised of a decision to redirect the complainant back to the provider where due process has not been followed, but other times it does not advise the provider.

In terms of current operations, it is worth noting that the experience of the Overseas Students Ombudsman Scheme is that the Commonwealth Ombudsman's Office investigators, whose primary experience is in dealing with and investigating complaints about administration in Australian Government Departments and Agencies – which have very substantial resources – process can be slow, bureaucratic and not as focused. This can result in focusing too heavily on points of fine detail at the expense of the core issue, particularly when investigating complaints about independent higher education providers. As a result, the process can be very expensive for independent higher education providers and lead to unexpected and difficult to predict results, which may be difficult to reverse if the provider disagrees with them.

**Schedule 1, Part 1, Division 3—Complaints, Subdivision A—Complaints to the National Student Ombudsman, Section 21AG, Ways of dealing with complaints**

Page 26 of the Explanatory Memorandum states that the National Student Ombudsman cannot conduct appeals or merits review of a decision. In the interests of transparency and fairness, we recommend that an independent review and appeals process be built in for all decisions and recommendations that the NSO makes.

**Schedule 1, Part 1, Division 3—Complaints, Subdivision B—Dealing with complaints, Section 21AJ Deciding not to deal with a complaint**

*The National Student Ombudsman may decide not to deal, or not to continue to deal, with a complaint made under this Part about an action taken by a higher education provider if, in the opinion of the National Student Ombudsman:*

- (a) the complaint is frivolous or vexatious, or was not made in good faith; or*
- (b) the complainant does not have a sufficient interest in the subject matter of the complaint; or*
- (c) the complainant has not yet raised the subject matter of the complaint with the higher education provider; or*
- (d) the action is an excluded action; or*
- (e) the complaint has been, is being, or is to be dealt with by another Commonwealth entity, an Ombudsman of a State or a State or Territory body; or*
- (f) the action has been, is being, or is to be reviewed by a court or by a tribunal constituted by or under an enactment; or*
- (g) to deal, or continue to deal, with the complaint is not warranted having regard to all the circumstances.*

It is all important that the Bill provides the vehicle for streamlining the complaints that are made in relation to Higher Education Loan Payments. There is an Ombudsman function that considers issues regarding VET Student Loans, yet presumably the NSO will consider complaints in relation to FEE-HELP and HECS-HELP. As outlined

elsewhere in this submission IHEA believes that the NSO should consider complaints from VET and higher education students, and the VSL Ombudsman could consider all loan related complaints, including HELP, subject to the demand for a standalone function to consider student loans and debts.

**Schedule 1, Part 1, Division 3 – Complaints, Subdivision D—Alternative dispute resolution, Section 21AN**  
**Participation in alternative dispute resolution process may be compulsory**

- (1) *The National Student Ombudsman may direct a higher education provider that is the subject of a complaint made under this Part to participate in an alternative dispute resolution process.*
- (2) *The National Student Ombudsman Rules may prescribe matters to which the National Student Ombudsman is to have regard when deciding whether or not to give a direction under subsection (1).*

Further information is required about what and why alternated dispute resolution may be required. It is our understanding that the NSO would provide the point of escalated dispute resolution. Clarity around this not being the case as well as examples of the sorts of matters that require an alternate dispute resolution are essential to clarify.

In addition, the NSO needs to be able to provide a streamlined approach, which subsumes all other complaint handling arrangements undertaken by state and territory ombudsman. Ideally, any tertiary student, whether domestic or international, should be able to access the services of a joined up NSO. The NSO should also work closely with DoE on the National Code and Support for Students Policy as well as TEQSA to ensure that all organisations have clarity about their functions and their interconnectedness with each other.

**Schedule 1, Part 1, Division 3 – Complaints, Subdivision E—Restorative engagement process, Section 2121AR**  
**Conducting a restorative engagement process**

- (1) *The National Student Ombudsman may conduct a restorative engagement process in relation to a complaint made under this Part about an action taken by a higher education provider.*

*Note: The National Student Ombudsman must have the complainant's agreement to act under this section and cannot continue if the complaint is withdrawn (see subsections 21AG(2) and (3)).*

- (2) *A person's participation in a restorative engagement process is voluntary.*

IHEA acknowledges the importance of offering a restorative engagement process between students and providers, should all parties wish to participate.

**Schedule 1, Part 1, Division 4—Investigations, Section 21AT Investigations**

- (1) *The National Student Ombudsman may investigate action taken by a higher education provider:*
  - (a) *on complaint made under this Part; or*
  - (b) *on the National Student Ombudsman's own initiative.*
- (2) *However, the National Student Ombudsman must not investigate an excluded action.*

With respect to investigations undertaken on the NSO's own initiative/own-motion investigations, it is important that guidance and criteria is developed about what circumstances would trigger the NSO undertaking an own-motion investigation. It is understood that own-motion investigations may be triggered by systemic issues identified through the NSO complaints data or the media as well issues identified through engagement with providers and other stakeholders such as DoE and civil society organisations. Having criteria in place will ensure a robust and defensible approach that underpins own-motion investigations and negate against parties inappropriately using the NSO processes to target a provider – for example a competitor who may try to obtain a commercial advantage. Stipulating in the Bill the need for criteria will support this outcome.



### **Schedule 1, Part 1, Division 5—Reporting by the National Student Ombudsman, Section 21AV Reports to higher education providers**

- (1) *The National Student Ombudsman may ask the higher education provider to give the National Student Ombudsman, within a specified time, particulars of any action that the higher education provider proposes to take with respect to the matters and recommendations included in the report.*

With respect to requesting information from a provider, a reasonable amount of time should be afforded to the provider to respond to the request, commensurate with the complexity and detail of the information requested. This timeframe should be at least two weeks for routine, straightforward and less complex requests and longer as complexity increases. The Bill should at least state that a reasonable amount of time will be afforded to the provider to respond to the NSO.

### **Schedule 1, Part 1, Division 5 – Reporting by the National Student Ombudsman, Section 21AX Reports of the National Student Ombudsman**

#### Annual and other reports

- (1) *As soon as practicable after the end of each financial year, the National Student Ombudsman must give an annual report to the Minister administering this Act, for presentation to the Parliament, on the operations of the National Student Ombudsman during that financial year.*

#### Content of report

- (7) *A report under this section on the operations of the National Student Ombudsman during a period must:*
- (a) *set out the number and nature of complaints made to the National Student Ombudsman under this Part during that period; and*
  - (b) *in relation to each higher education provider for which a complaint was made to the National Student Ombudsman under this Part—set out:*
    - (i) *the number of complaints made to the National Student Ombudsman during that period; and*
    - (ii) *the nature of the complaints made to the National Student Ombudsman during that period; and*
  - (c) *if the National Student Ombudsman has conducted any investigations under paragraph 21AT(1)(a)—set out:*
    - (i) *the number of such investigations started during that period; and*
    - (ii) *the number of such investigations completed during that period; and*
  - (d) *if the National Student Ombudsman has conducted any investigations under paragraph 21AT(1)(b)—set out:*
    - (i) *the number of such investigations started during that period; and*
    - (ii) *the number of such investigations completed during that period; and*
  - (e) *set out details of recommendations made during that period in reports under section 21AV; and*
  - (f) *if the National Student Ombudsman is aware of any actions taken by higher education providers in response to recommendations made in reports under section 21AV—set out details of such actions taken during that period; and*
  - (g) *if the National Student Ombudsman has referred any complaints made under this Part to a higher education provider for investigation and report under Subdivision C of Division 3 of this Part—set out:*

IHEA supports the NSO publicly reporting on the number and nature of complaints made/investigations started

and decisions taken by the Ombudsman. Reporting the number of complaints in relation to the number of higher education providers is appropriate. However, findings or recommendations made and details of actions taken should be de-identified and not specify the name of the provider or the complainant. With respect to any data, whether public or otherwise, about the number of complaints received per higher education provider, it is imperative that this be represented as a proportion of each provider's total enrolments, otherwise misperceptions will inevitably emerge if reporting is limited to raw numbers.

As part of its reporting and recording of complaints, there needs to be consideration that regardless of whether a complaint is dismissed or redirected, under current experience with the Overseas Student Ombudsman, it is still recorded as a complaint against the provider. When the Overseas Students' Ombudsman reviews a provider's profile, it only considers the absolute number of complaints received from students at the provider, rather than the number of complaints as a percentage of the student body. These issues may result in an unjustly negative perception of the provider based on a skewed presentation of information, which can and should be corrected. IHEA believes issues of consistency of communication with providers as well as the procedural issues identified should be addressed in establishing the NSO to ensure that best practice in handling, communicating and reporting complaints is occurring that is fair, equitable and representative of what is occurring. This will be critical in terms of how the NSO reports on complaints.

#### **Schedule 1, Part 1, Division 6—Other powers and duties of the National Student Ombudsman, Subdivision C – Duties, Section 21AZD Duty to accord procedural fairness**

*The National Student Ombudsman must comply with the rules of procedural fairness when exercising a power under this Act.*

*Example 1: If the National Student Ombudsman sets out a critical opinion of a person in a report under section 21AV (reports to higher education providers), that person must be given an opportunity to make submissions (see subsection 21AU(3)).*

*Example 2: The National Student Ombudsman must accord procedural fairness to a person if the National Student Ombudsman sets out a critical opinion of the person.*

In investigating complaints, the NSO should do so impartially, transparently and without pre-judgement. It is important that if the NSO decides to investigate a complaint, that it does not form a preliminary view outlining the action it believes the provider should take to resolve the complaint ahead of giving the provider an opportunity to comment on any complaint. Otherwise, to do so may undermine the principles that the NSO is operating fairly and without pre-judgement.

The issue of procedural fairness also needs to be considered in the context of whereby the Commonwealth Ombudsman both investigates complaints and allegations of maladministration and then determines and imposes remedies and penalties. This does not occur in other examples of industry ombudsman schemes, such as the Telecommunications Industry Ombudsman or state based energy, water or public transport ombudsman schemes. These other models should be considered in finalising the model of the NSO, which is being established in legislation, to ensure the best model is implemented.

#### **Schedule 1, Part 1, Division 7—Miscellaneous, Section 21AZE Continued application of Part**

##### *Former registered higher education providers*

(1) *Subsection (2) applies if:*

(d) *the National Student Ombudsman receives a complaint under this Part about the action before the deregistration time or within 12 months after the deregistration time; and*

The NSO plans to consider complaints made about the actions of a higher education provider that no longer exists, if a complaint is made within 12 months of the provider being deregistered. Further detail is needed about

how the NSO will be able to ascertain reliable information and evidence regarding a provider that has been deregistered and what recommendations could be made in such circumstances.

### **Schedule 1, Part 1, Division 7 – Miscellaneous, Section 21AZG Authorised disclosure of information**

#### Disclosure to TEQSA

- (1) *An official may, subject to subsection (5), disclose relevant information to the Chief Executive Officer of TEQSA if the disclosure is for the purposes of assisting TEQSA to perform its functions or duties or exercise its powers.*

#### Disclosure to Ministers

- (2) *An official may, subject to subsection (5), disclose relevant information to the Minister administering this Act, or the Higher Education Minister, for the purposes of assisting in the performance of the functions or duties or the exercise of the powers of that Minister.*

#### Disclosure to Higher Education Department

- (3) *An official may, subject to subsection (5), disclose relevant information to the Secretary of the Higher Education Department if the disclosure is for the purposes of assisting the Higher Education Department to perform its functions or duties or exercise its powers.*

#### Disclosure to prescribed body

- (4) *An official may, subject to subsection (5), disclose relevant information to a prescribed body (within the meaning of subsection 21AE(5)) if the disclosure is for the purposes of assisting the body to perform its functions or duties or exercise its powers.*

As a general principle, we understand that a Commonwealth Ombudsman's investigation is confidential (as are most pre-enforcement regulatory investigations). There are complex statutory provisions in the current Overseas Student Ombudsman Scheme legislation creating some exceptions to allow disclosure in limited circumstances. Any disclosure arrangements will need to be carefully reviewed to ensure that they provide the appropriate confidentiality necessary to give students and providers confidence in the NSO, while also enabling appropriate disclosure to other regulators and to enable providers to publicly defend themselves against inappropriate criticism.

In providing and disclosing information or advice about a provider, whether it be to TEQSA, DoE or the Minister for Education, in the interests of transparency, the provider should be notified that this is occurring or has occurred. Further, greater clarity is required around the circumstances in which the NSO will refer or direct complaints to relevant state and territory or Commonwealth complaints bodies if there is a more appropriate body to handle the complaint.

Greater clarity and guidance about examples of what complaints the NSO would need to refer to a state or territory complaints body will be important. It is imperative that the establishment of the NSO provides a streamlined, simplified process for complaints to be escalated by students who remain dissatisfied once they have been through a provider's grievance/complaint procedures. IHEA believes that the NSO should not duplicate roles of other bodies, be clear in the functions it does and does not undertake and communicate this to all stakeholders and should not add complexity. As such, identifying intersections and clarifying when and why a matter may be referred on by the NSO will support this objective and mission of the NSO.

## Who We Are

Independent Higher Education Australia Ltd. (IHEA) is a peak body established in 2001 to represent Australian independent (private sector) higher education institutions. Our membership spans independent universities, university colleges and other institutes of higher education, all of which are registered higher education providers accredited by the national higher education regulator, TEQSA or associate members seeking registration.

Our Vision is that: students, domestic and international, have open and equitable access to world class independent higher education in Australia, built on the foundations of equity, choice, and diversity.

Our Mission is to represent independent higher education and promote recognition and respect of independent providers as they contribute to Australian education, the Australian economy, and to society in general. We achieve this by promoting continuous improvement of academic and quality standards within member institutions, by advocating equity for their staff and students, and by delivering services that further strengthen independent providers' reputations as innovative, sustainable, and responsive to the needs of industry and other relevant stakeholders in both higher education and vocational education and training. IHEA's commitment is to excellence, productivity and growth in independent higher education being delivered through a trusted Australian education system underpinned by equity, choice, and diversity.

IHEA members have different missions, scales, and course offerings across the full AQF range (Diplomas to Doctorates). Members comprise:

- Four private universities (Bond University, Torrens University, University of Divinity, Avondale University).
- Six University Colleges (Alphacrucis University College, Moore Theological College, Australian College of Theology, Sydney College of Divinity and SAE University College and the Australian College of Applied Professions).
- Six self-accrediting institutes of higher education (Griffith College, Kaplan Business School, Marcus Oldham College, Excelsia College, The College of Law, and the Australian College of Applied Professions).
- Seventy two not-for-profit and for-profit institutions of higher education; and related corporate entities.

IHEA members teach approximately 74 percent of the students in the independent sector (i.e., more than 130,000 students) and educate students in a range of disciplines, including law, agricultural science, architecture, business, accounting, tourism and hospitality, education, health sciences, theology, creative arts, information technology, human services and social sciences.

IHEA holds a unique position in higher education as a representative peak body of higher education providers. Membership in IHEA is only open to providers registered, or seeking registration, with the Australian regulator – TEQSA. However, some IHEA members are dual and multi-sector providers who also deliver VET and/or English Language Intensive Courses for Overseas Students (ELICOS) courses.

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