

# Universities Accord (National Student Ombudsman) Bill 2024 [Provisions] Inquiry

## Joint Submission:

Fair Agenda

End Rape on Campus Australia

(October 2024)

FAIR  
AGENDA



## About Fair Agenda

Fair Agenda is an independent community organisation campaigning for a fair and gender equitable future. Our 41,000 members campaign on a broad range of gender equity issues, including women's safety, economic security and agency. We are focused on addressing gender-based violence in all contexts, including educational settings.

## About End Rape on Campus Australia

End Rape on Campus Australia (EROC Australia) works to end sexual violence at universities and residential colleges through direct support for survivors and their communities; prevention through education; and policy reform at the campus, state, and federal levels.

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Together with the National Union of Students, and The Hunting Ground Australia Project, survivor advocates and students, Fair Agenda and EROC Australia have been at the foreground of efforts to address and prevent sexual assault and sexual harassment in Australian universities and residential colleges, and to improve institutional accountability.

### Contacts

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## Introduction

Fair Agenda and End Rape on Campus Australia welcome the opportunity to provide a submission to the Senate Education and Employment Legislation Committee's inquiry into the Universities Accord (National Student Ombudsman) Bill 2024 [Provisions].

We warmly welcome the introduction of the legislation to establish a National Student Ombudsman, which is a critical first step to realising the goals of the *Action Plan Addressing Gender-based Violence in Higher Education*<sup>1</sup>.

EROC Australia and Fair Agenda were pleased to have been consulted on the drafting of the Bill. We were also pleased that initial concerns that we had raised prior to the Bill's introduction were addressed by Minister Clare's office and the Department of Education.

We note that for the National Student Ombudsman to truly be effective in addressing sexual assault and harassment within higher education communities, it must work in conjunction with the proposed *National Higher Education Code to Prevent and Respond to Gender-Based Violence*<sup>2</sup>, and we look forward to the introduction of strong standards within the expected legislation for the Code. We welcome the tabling of the *National Higher Education Code to Prevent and Respond to Gender-based Violence & National Student Ombudsman - Document*<sup>3</sup> by Minister Clare on 11 September 2024 as an indication of the kinds of measures to be included in the Code.

**We strongly support the passage of this Bill, and other associated reforms outlined in the *Action Plan Addressing Gender-based Violence in Higher Education*<sup>4</sup>.**

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<sup>1</sup> Department of Education. (2024a). *Action plan addressing gender-based violence in higher education*. Australian Government. [www.education.gov.au/action-plan-addressing-genderbased-violence-higher-education/resources/action-plan-addressing-genderbased-violence-higher-education](http://www.education.gov.au/action-plan-addressing-genderbased-violence-higher-education/resources/action-plan-addressing-genderbased-violence-higher-education)

<sup>2</sup> Department of Education. (2024b). *The Action Plan Addressing Gender-based Violence in Higher Education*, Australian Government. [www.education.gov.au/action-plan-addressing-genderbased-violence-higher-education](http://www.education.gov.au/action-plan-addressing-genderbased-violence-higher-education)

<sup>3</sup> Department of Education (2024c). *National Higher Education Code to Prevent and Respond to Gender-based Violence & National Student Ombudsman - Document*, Australian Government. [www.aph.gov.au/Parliamentary\\_Business/Tabled\\_Documents/7352](http://www.aph.gov.au/Parliamentary_Business/Tabled_Documents/7352)

<sup>4</sup> Department of Education. (2024a).

## Components of the proposed Bill

### The need for a functioning complaints mechanism

We believe that the establishment of the National Student Ombudsman will address the current deficiencies in complaints mechanisms available to Australian higher education students who seek redress should they have concerns about any aspect of their education.

EROC Australia has provided support to more than 250 student victim-survivors from 39 of Australia's 43 universities, including assisting more than 100 students to explore their options for filing complaints against their higher education provider in relation to their response to reports of sexual assault and/or sexual harassment. It is our experience that the existing pathways for redress for higher education students are unnecessarily complicated, leading to many students choosing not to pursue complaints. Those who choose to continue with a complaint must determine what options may be available to them, and then must navigate the complexities of determining which option is the most suitable for them. Navigating these options depends on many factors - such as if the student is a domestic or international student, whether the institution they attend is a private or public provider, and whether they're seeking redress under state or territory anti-discrimination statutes, or under the *Higher Education Standards (Threshold Standards) 2021*.

EROC Australia found that the existing complaints mechanisms available to students are ineffective and that students who have engaged in these processes have suffered further harm. This has been particularly acute for students who have chosen to engage with TEQSA's complaints or "concerns" process, most of whom reported significant new or worsening mental and physical health concerns as a result of trying to navigate that process. As a result, EROC Australia actively advises student victim-survivors not to engage with TEQSA's processes, and we no longer assist students to file a TEQSA complaint or "concern".

The establishment of the NSO will streamline the existing confusing patchwork of options, enabling more students to seek redress if their provider fails to respond adequately to reports of sexual assault and/or harassment.

### **The importance of providing for complaints to be made on behalf of students**

We welcome the inclusion of provisions for complaints to be made against a provider on behalf of a student of that provider in *Section 21AD* of the Bill.

Student victim-survivors that have been supported by EROC Australia have often required assistance to file complaints, as they have found the process overwhelming, intimidating or difficult to undertake without assistance. Victim-survivors have noted that the ability to have someone assist them or file the complaint on their behalf allows them to continue focusing on their studies and to feel supported throughout the complaint process.

Additionally, this provision will help to ensure that the NSO is accessible for students with disability, who may require the assistance of support workers, interpreters, or advocates such as university student support staff to engage with the NSO.

It is our experience that both TEQSA and the Commonwealth Ombudsman currently have sufficient measures in place to ensure that the student complainant consents to the complaint being made on their behalf, and we recommend that the NSO consider similar measures.

### **The importance of various avenues for redress**

Fair Agenda and EROC Australia commend the inclusion in *Section 21AG* of alternative dispute resolution processes and restorative engagement processes to resolve complaints. Student victim-survivors often report that their reason for raising a complaint is to improve policies and processes for other students. At present, however, there is no safe and functional process for them to engage with to seek such a resolution.

We believe that the inclusion of the option to access an alternative dispute resolution process or restorative engagement processes will build the trust of victim-survivors in the NSO, and will increase the likelihood of some students engaging in complaints processes with the NSO.

### **The need for adequate staff with appropriate skills and expertise**

We wish to highlight the need for the NSO to be adequately staffed and the need for staff to have appropriate skills and expertise to accept, investigate and respond to complaints, including via alternative dispute resolution and restorative engagement processes.

Despite the regulator's claims to the contrary, in EROC Australia's experience, TEQSA did not have relevant expertise to respond to complaints made by students in relation to sexual assault and/or harassment, nor did they sufficiently seek out this expertise. As a result, TEQSA's complaints system was not trauma-informed or student-centered, and it caused significant harm to students who attempted to engage with the process. We are particularly cognisant of the need to avoid replicating this harmful approach. In order to meet the needs of victim-survivors, we recommend that the NSO be staffed with people with specific expertise in sexual assault response and higher education student support as well as discrimination based on race, disability, sexuality and gender.

It is critically important that the NSO has sufficient staff to manage its workload. We note with concern that some organisations tasked with providing assistance to young people who have experienced sexual harm in other areas, such as workplace harassment, often have significant waitlists or are forced to turn away those who are seeking help. As of 30 September 2024, Youth Law Australia, a community legal service that provides legal assistance to young people, states on its website that it is unable to take any further requests for help as it is receiving more requests than it can respond to<sup>5</sup>. To avoid causing further harm to victim-survivors, the NSO must have adequate staff to receive, respond to and investigate complaints without delays.

### **The proposed transparency and accountability measures**

Current approaches have clearly not been successful at ensuring that higher education providers respond appropriately to reports of sexual assault and harassment. We believe that - as with other issues of quality and compliance - transparency and accountability are levers that must be utilised to drive change on this issue.

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<sup>5</sup> Youth Law Australia (2024). *Get help now*. <https://yla.org.au/get-help/>

We strongly support the transparency and accountability measures in the Bill, particularly those in *Subsection 21AX* which require the NSO to report annually on complaints numbers broken down by provider, details of recommendations made by the NSO following an investigation and providers' responses to these recommendations. As noted by Dr. Allison Henry, TEQSA has finalised dozens of complaints about the handling of reports of sexual assault and/or harassment by higher education providers, but has not found a breach of the *Threshold Standards* or taken any regulatory action. TEQSA has also refused to publicly disclose which providers have been the subject of complaints about responses to sexual violence. As a result, there is currently no transparency about which providers have been the subject of complaints and/or investigations<sup>6</sup>.

We believe that ongoing transparency about the number of complaints received by the NSO, the recommendations made and the providers' responses to those recommendations will help to ensure providers improve their responses to reports of sexual violence. Ongoing transparency will also increase student confidence in the NSO, which we believe is critically important to its success.

### **Specificity regarding timeframes**

Student victim-survivors are frequently expected to navigate provider complaints processes that take between three to twelve months to resolve, despite Standard 2.4.2 of the *Threshold Standards* requiring institutions to have in place policies and processes that deliver a timely resolution of formal complaints about administrative decisions<sup>7</sup>. Non-compliance with this Standard featured in almost all the complaints EROC Australia filed with TEQSA.

Despite TEQSA requiring institutions to resolve complaints in a timely manner, TEQSA's complaints process often took as long, if not longer, than the university process that was the subject of the complaints. The combination of lengthy processes at both the provider and federal level resulted in students graduating or withdrawing from their studies before their complaint was resolved.

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<sup>6</sup> Henry, A. (2024). *Help on the way for survivors of campus sexual violence*. University of New South Wales. [www.unsw.edu.au/newsroom/news/2024/09/help-survivors-campus-sexual-violence](http://www.unsw.edu.au/newsroom/news/2024/09/help-survivors-campus-sexual-violence)

<sup>7</sup> *Higher Education Standards Framework (Threshold Standards) 2021* (Cth).

Student victim-survivors often report to EROC Australia that the ambiguity of “timely resolution” or “within a timely manner” caused them significant anxiety. For some students, the lack of a specified timeframe for the resolution of complaints acted as a deterrent, as they did not want to enter another process that did not have a clear end date.

Additionally, lengthy complaints processes are reported by student victim-survivors to be one of the main factors that compound the trauma they have experienced. These long timeframes impact the mental and emotional wellbeing of victim-survivors, ultimately impacting their ability to succeed academically.

We note that the Commonwealth Ombudsman’s office advises complainants that while they will endeavour to resolve complaints as quickly as possible, some may take several months to be investigated and complainants will be kept informed of the investigations processes. The Commonwealth Ombudsman notes that they seek to finalise 75% of complaints lodged with their Office within 90 working days<sup>8</sup>. We trust that a similar objective will be applied to complaints made to the NSO.

### **The need for student advocates**

We wish to reiterate that some students will require assistance to engage in NSO processes. At present, the provision of assistance to students who have been impacted by sexual assault or sexual harassment and who wish to pursue complaints about their provider is left largely to unpaid student representatives and/or unpaid advocacy organisations like EROC Australia.

Many of the student victim-survivors supported by EROC Australia have also been students with disability, as these students are often targeted by offenders due to perceived vulnerabilities. Additionally, student victim-survivors often acquire psychosocial disabilities such as post-traumatic stress disorder following an assault. It is our experience that students with disability may require assistance to engage in escalated complaints processes. It is critical to note that currently, support for students with disability to access academic accommodations and provider-level complaints processes - including through supports like Auslan interpreters - is not covered via the NDIS. As a result, much of the assistance provided to students with disability to engage

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<sup>8</sup> Commonwealth Ombudsman (2024). *Frequently asked questions*. Australian Government. [www.ombudsman.gov.au/about/frequently-asked-questions](http://www.ombudsman.gov.au/about/frequently-asked-questions)



in these processes or seek external support to do so, is also undertaken by unpaid student representatives and/or advocates.

We believe that it would be beneficial for the NSO to include paid advocate roles to assist students to engage in NSO processes. This would not only increase the accessibility of these processes, it would also enhance student trust in the NSO.

**EROC Australia and Fair Agenda strongly support the passage of the Bill.** We believe the establishment of the National Student Ombudsman is essential not only to the success of the *Action Plan Addressing Gender-based Violence in Higher Education*, but to ensure fairness, transparency and accountability across Australia's higher education sector.

We recognise that some of the issues raised in our submission pertain to the operationalisation of the NSO, rather than the contents of the Bill, but believe that these considerations underscore the importance of learning from the failures of TEQSA and ensuring that the NSO is fit for purpose.