



## Queensland University of Technology

### Submission to the Senate Education and Employment Legislation Committee inquiry into the provisions of the *Universities Accord (National Student Ombudsman) Bill 2024*

The University welcomes the opportunity to provide advice to the Senate Education and Employment Legislation Committee's inquiry into the provisions of the *Universities Accord (National Student Ombudsman) Bill 2024* (the Bill).

QUT supports the broad purpose of the Bill, to establish the National Student Ombudsman as a statutory function of the Commonwealth Ombudsman, creating a dedicated body to handle complaints from students in higher education institutions, including issues relating to sexual assault, harassment and discrimination on university campuses.

As a higher education provider with an institutional-level Student Ombudsman Office, supported by a complaints mechanism underpinned by strong policies and procedures, we are confident in our internal capacity to handle complaints fairly and effectively. However, we acknowledge that evidence suggests current student complaint processes across the higher education sector are inconsistent, and recognise the arguments for the establishment of a National Student Ombudsman that can address current gaps in complaints handling across the university sector. We share the position of Universities Australia that the establishment of a National Student Ombudsman is an important step towards ensuring students are fully supported while studying.

The University endorses initiatives that seek to enhance campus safety, address gender-based violence, ensure accountability among universities and improve the overall sector response to student welfare concerns. As such, we are supportive of the comprehensive, trauma-informed complaints mechanism that will underpin the National Student Ombudsman, as well as the restorative engagement process and comprehensive appeal avenues. This legislation will complement the important work that is already being undertaken by QUT to improve the university experience of our students.

We make respectful observations and recommendations surrounding central components of the Bill, namely: academic judgement; impact on existing policies and process; transitional provisions; trauma-informed practice; and monitoring and effectiveness.

#### **Academic Judgement**

We note that subsection 21AD (3)<sup>1</sup> excludes the National Student Ombudsman from investigating matters related to academic judgement, with the Explanatory Memorandum (EM) providing an indicative, non-exhaustive list of such matters including 'decisions about the academic merit of a grade awarded, the content of a curriculum, and teaching and assessment methods.' While we agree entirely that academic judgement sits outside the

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<sup>1</sup> All numerical legislative references in this submission are to the present Bill, with the exception of the HESA reference at p2 n2.

range of matters upon which the National Student Ombudsman is competent to make their own judgements – the reliance on the EM to explain the intent and illustrate what constitutes academic judgement is inadequate. Academic judgement relates to the specific expertise of academic teachers, which we argue is beyond the scope of expertise of the National Student Ombudsman, and is closely governed by university academic boards in the discharge of their weighty responsibilities as self-accrediting institutions. Academic judgement is too central to the mission of higher education to leave undefined in the Act and merely illustrated in the Amendment Bill's EM: its definition should be written into the legislation itself.

**QUT recommends that the Bill includes a definition of academic judgement as actions and decisions relating to assessment, curriculum, feedback and teaching that rely on an opinion of an academic.**

We note that subsection 21AD (4) would enable a Minister to issue National Student Ombudsman Rules that exempt certain actions from exclusion 'in the event that the definition of excluded action was inappropriately limiting the matters that students could complain about'. We are deeply concerned about the prospect of the use of the Rules to include matters of academic judgement. While it is not currently clear why a Minister may need to provide additional flexibility on request to the National Student Ombudsman to hear complaints on matters excluded by the future Act, we do not reject the possibility that grounds may with respect to some of the exclusions: however, we argue in the strongest terms that there is no case for political interference in matters of academic judgement.

Academic judgement in the context of the present Bill also has important interactions with institutions' obligations to support and promote academic freedom within the *Higher Education Support Act 2003* (HESA). Academic freedom is defined within HESA, with parts (a), (b) and (f) of the definition being especially pertinent to this inquiry.<sup>2</sup> The inclusion of matters of academic judgement within the National Student Ombudsman's remit will necessarily infringe upon institutions' obligations to uphold, promote and protect academic freedom, as required of them under HESA, and upon individual academics' legally protected right to exercise academic freedom. This tension cannot be resolved by the issuance of a legislative instrument.

Should a Minister wish to intervene in matters of academic judgement, with these grave implications for academic freedom, the onus must be on them to convince the Parliament of the merits of their case in a more forceful and comprehensive way than is required by the technical registration of an exemption from exclusion in a disallowable instrument. Let that Minister bring a future Amendment Bill, and put the merits in a second reading debate, if they are so confident they have a sound argument for political intervention in matters of academic judgement that justified the violation of academic freedom.

**QUT recommends the explicit exclusion of matters of academic judgement from the scope of the National Student Ombudsman Rules to exempt matters from the statutory exclusions.**

We note that the EM explicitly places special consideration outside the academic judgement exclusion, rendering it in scope for the National Student Ombudsman to consider and

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<sup>2</sup> "*academic freedom* means the following:

- (a) the freedom of academic staff to teach, discuss, and research and to disseminate and publish the results of their research;
- (b) the freedom of academic staff and students to engage in intellectual inquiry, to express their opinions and beliefs, and to contribute to public debate, in relation to their subjects of study and research; ...
- (f) the autonomy of the higher education provider in relation to the choice of academic courses and offerings, the ways in which they are taught and the choices of research activities and the ways in which they are conducted."

HESA: Schedule 1 – Dictionary, Clause 1 – Definitions

investigate complaints. However, it is our experience that this distinction is, in reality, not so easy to draw, as it can be difficult to decouple academic judgement from the determination of special consideration. The application of special consideration in academic settings can be complex, often involving the determination of whether an individual circumstance justifies a change in assessment conditions, with such determinations having intertwined academic and non-academic components. Special consideration therefore sits on the boundary of academic judgement. Rather than ruling it wholly in, as the EM currently does, we recommend that the mention of special consideration acknowledges that it potentially contains (excluded) matters of academic judgement as well as (included) procedural and other non-academic matters.

**QUT recommends that mentions of special consideration acknowledge that it often involves both excluded matters of academic judgement and included matters.**

Appeals and complaints processes within higher education settings regularly overlap, and intersect with, multiple institutional policies including admission, assessment, course progression and teaching (as well as academic freedom, as outlined above). For example, an appeal on a course progression ruling could incorporate a complaint that addresses an academic grade (excluded action), as well as a course progression ruling (included action) and teaching quality (included action). Although the academic judgement exclusion paragraph of the Bill does account for the blended nature of these decisions by means of the qualification 'to the extent that the action involves',<sup>3</sup> the EM at present elides these nuances, with the risk that interpretations of the provisions in practice have the potential to undermine the normal exercise of academic judgement and associated integrity measures within the higher education sector. The inclusion of a clear definition of academic judgement in the legislation, accompanied by a recognition of the nuances, interactions and overlaps in real life educational settings in a revised EM, would go a long way towards resolving these issues.

### **Existing Policies and Processes**

The establishment of the National Student Ombudsman will place a new statutory function within an existing field of policies and procedures that address student complaints within the context of higher education. It is not yet clear exactly how the role of the National Student Ombudsman will intersect with the existing student complaint policies, procedures and processes already operating within individual universities.

As noted above, QUT has an institutional-level Student Ombudsman Office, complaints mechanism and strong policies and procedures. While this does not diminish our support for a National Student Ombudsman, nor our acknowledgement of the case for delivery of consistency in complaints-handling across the sector, we emphasise that the establishment of this function will require care to minimise confusion and duplication (indeed, triplication) of effort. This will be particularly relevant to those institutions with a mature and robust complaints handling process.

For this reason, we recommend the Committee seeks further clarification from the Government as to what impact the National Student Ombudsman will have on existing institutional-level Student Ombudsman Offices. (We note that paragraph 21AJ (e) addresses the potential for overlap and 'forum shopping', as the EM puts it, with respect to State and Territory Ombudsman functions.) In particular, it would be of value to the Committee to know

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<sup>3</sup> "(3) Each of the following actions taken by a higher education provider is an *excluded action*: ...  
(c) any action to the extent that the action involves the exercise of academic judgement;"

Section 21AD, subsection (3), paragraph (c)

whether there will be specific complaint types that the Government envisages will be within the exclusive domain of the National Student Ombudsman.

### **Transitional Provisions**

The commencement provisions hold that the National Student Ombudsman functions will come into effect on 1 February 2025 or one month after Royal Assent, whichever is later. With particular reference to section 21AJ, especially but not only paragraphs (c) and (e), it will be necessary to ensure coordination of complaints already being heard in other fora (e.g. within institutions or by state or territory bodies) that could be referred precipitously to the National Student Ombudsman upon its establishment.

We recommend a phased introduction of the National Student Ombudsman and its associated powers to ensure that universities can appropriately adapt existing policies, procedures and processes for the handling and referral of student complaints.

### **Trauma-Informed Practice**

The university notes that the Universities Accord Final Report recommended that the National Student Ombudsman require trauma-informed practice when engaging students in the complaint mechanism. While the EM highlights the requirement for expertise in trauma-informed practice, there is an absence of explicit reference to 'trauma-informed' practice or expertise in the proposed legislation. We recommend the inclusion of a reference to trauma-informed practice within the text of the Bill itself, in the context of its role within the complaints handling activities of the National Student Ombudsman. This would provide a helpful frame for the complaints process, while also establishing the commitment to restorative engagement processes.

### **Monitoring and Effectiveness**

While section 21AX establishes the requirements of the National Student Ombudsman to report annually to the Minister for presentation to the Parliament, we recommend the Committee seeks additional detail from the Government regarding its intended approach to monitoring the function and its effectiveness in handling complaints from students in higher education institutions, especially in relation to sexual assault, harassment and discrimination. The Bill states that the annual report will provide complaint details and trends, as well broader issues that arise from investigations, which will inform improvements to complaint handling. However, it is necessary for institutions that will be subject to the powers and findings of the National Student Ombudsman to have visibility of the accountability measures of the function and its associated resourcing.

### **Further engagement**

QUT would welcome the opportunity to expand upon this advice, should that be of value to the Committee. For additional information in relation to this submission, please contact:

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