



National Student Ombudsman: Model Overview

Introduction

The Australian Government is establishing a National Student Ombudsman as the primary escalated complaints body for higher education students.

The National Student Ombudsman will be independent and impartial and will have a complaint-making process that is effective and accessible for students. It will adopt a trauma-informed approach to complaint handling and offer restorative engagement processes where appropriate.

The National Student Ombudsman will promote best practice in complaint handling across the higher education sector, work closely with regulators, and contribute to a stronger focus on positive student experiences and wellbeing.

The Australian Government has introduced legislation to establish the National Student Ombudsman as a new function of the Commonwealth Ombudsman. It is anticipated the National Student Ombudsman will begin taking complaints from 1 February 2025, subject to the passage of legislation.

This document provides an overview of the kind of complaints the National Student Ombudsman will be able to receive and how it will handle those complaints, as well as how it will work with providers and regulators to promote best practice across the higher education sector. More information about how and where students will be able to make a complaint will be made available ahead of the National Student Ombudsman commencing.

Background

In February 2024, Education Ministers agreed to the *Action Plan Addressing Gender-based Violence in Higher Education* (Action Plan). The Action Plan recognises the unique role that higher education providers can and must play in driving the broader social change needed to address gender-based violence, as well as the distinct responsibilities they hold in relation to creating safe study, work, social and living environments.

The establishment of a National Student Ombudsman is the first action of the Action Plan. The National Student Ombudsman will allow higher education students to escalate complaints about the actions of their higher education provider, including complaints about sexual harassment, assault and violence.

The Government has also committed to introducing a *National Higher Education Code to Prevent and Respond to Gender-based Violence* (National Code), another key measure in the Action Plan.

The National Code will set best practice standards for higher education providers in preventing and responding to gender-based violence. Together, these measures will ensure greater oversight and accountability of providers and drive a stronger focus on positive student experiences.

More information about the Action Plan is available on the Department of Education's website at www.education.gov.au/action-plan-addressing-genderbased-violence-higher-education.

The role of the National Student Ombudsman

The National Student Ombudsman will help to resolve individual student complaints and improve complaint handling by higher education providers.

The National Student Ombudsman will be able to:

- handle complaints from higher education students who have raised a complaint with their provider and are unhappy with their provider's response
- work with higher education providers to support best practice complaint handling and improve the student experience when making complaints
- share information with the Department of Education and the Tertiary Education Quality and Standards Agency (TEQSA) about a provider, which may provide the basis for enforcement action
- initiate an investigation on their 'own motion' (i.e. without having received a complaint), for example in response to issues identified in the media or through engagement with stakeholders
- facilitate restorative engagement processes between the student and provider where appropriate, and
- bring parties together to resolve complaints through an alternative dispute resolution process.

The National Student Ombudsman's complaint handling and investigations staff will be trained in trauma-informed practices. Applying a trauma-informed approach where appropriate will promote safe and person-centred experiences that support the wellbeing of complainants.

The National Student Ombudsman will be free of charge for higher education students to access.

Making a complaint

Who can make a complaint?

The National Student Ombudsman will be able to receive escalated complaints from a student enrolled in any course of study other than a vocational education and training (VET) course with a registered higher education provider. This includes, for example, former students, students who have or are attempting to apply or enrol, and students studying at overseas campuses of a registered higher education provider.

To ensure that the National Student Ombudsman is accessible to as many students as possible, it will be able to accept:

- complaints made on behalf of another person, with their consent
- anonymous complaints
- group complaints
- historical complaints, if the National Student Ombudsman believes the complaint is still able to be handled.
 - There will be no time limit on the historical complaints the National Student Ombudsman may consider.

The National Student Ombudsman will also be able to accept complaints made by students living in accommodation which is owned and/or operated by their higher education provider (i.e. where a student is able to lodge complaints about their accommodation to their higher education provider).

When can a student make a complaint?

Higher education students will generally need to make their complaint directly to their higher education provider in the first place. If the student isn't happy with how their provider handles their complaint, they will be able to take their complaint to the National Student Ombudsman. This approach gives providers the opportunity to resolve a student's complaint, without the complaint needing to be escalated.

The National Student Ombudsman will be able to accept complaints that have not first been raised with a provider where it accepts it would be unreasonable for the student to be expected to do so, for example where there are cultural, language or accessibility barriers to raising a complaint with their provider.

Students will also be able to complain to the National Student Ombudsman if there are unreasonable delays in a provider handling their complaint, or if their provider acts unreasonably during the complaints process.

What can students complain about?

Higher education students will be able to make a complaint about a broad range of issues related to their studies or student life, including:

- student safety and welfare, such as gender-based violence and other forms of sexual 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 living with disability or experiencing special circumstances.

There will be some complaints about the actions of higher education providers the National Student Ombudsman will not be able to investigate. This includes complaints about:

- Actions that rely on academic judgement (such as the grade a student has received).
 - The National Student Ombudsman will be able to investigate the policies and procedures that guide academic decisions and whether the provider has followed these. It will also be able to consider a range of other academic matters that do not rely on academic judgement, for example, matters such as granting of special consideration and reasonable adjustments.
- Actions relating to a VET course.
 - Students complaining about VET related matters can contact the National Training Complaints Hotline online or by calling 13 38 73 to have their complaint referred to the most appropriate body.
- Actions relating to employment.
 - Staff may access existing complaints mechanisms under the *Fair Work Act 2009* as well as new Respect at Work and positive duty obligations under the *Sex Discrimination Act 1984*.

Where a complaint relates in part to an action the National Student Ombudsman can't consider, it will still be able to consider the remainder of the complaint.

The National Student Ombudsman will have the discretion not to handle a complaint in some circumstances. For example, if the student hasn't yet raised the complaint with their higher education provider and it would be reasonable to expect them to do so; if the complaint is frivolous; or if the complaint has already been sufficiently investigated, such as by a state or territory ombudsman, court or tribunal.

What protections will there be for students who raise a complaint?

It will be a criminal offence to threaten or subject a person to detriment because they have made, may have made, propose to make or could make a complaint to the National Student Ombudsman, with a penalty of 6 months imprisonment.

A person will also be able to apply to the court for a range of civil remedies (such as compensation, apologies and injunctions) to prevent or address detrimental action that is taken, or threatened to be taken, because a person makes, may make, proposes to make or could make a complaint to the National Student Ombudsman.

How will the complaint be handled?

There are multiple ways the National Student Ombudsman may handle a complaint, including:

- referring the complaint to the higher education provider for investigation
- using a restorative engagement process
- using an alternative dispute resolution process, or
- conducting an investigation.

The ways of handling a complaint are not mutually exclusive, and the National Student Ombudsman may use one or more method to try to resolve a particular complaint. The National Student Ombudsman will need the consent of the complainant for any method of handling a complaint.

The National Student Ombudsman will provide clear explanations and keep the student informed throughout the complaints process, in line with the Office of the Commonwealth Ombudsman's [Service Charter](#).

Referring a complaint to the higher education provider

The National Student Ombudsman may, with the complainant's consent, refer the complaint to the higher education provider. This will allow the National Student Ombudsman to require a provider to investigate a complaint where this is likely to be more effective or appropriate than the National Student Ombudsman starting an investigation. For example, this may be appropriate where a student has complained to their provider and there have been unreasonable delays in consideration of the complaint, or the provider appears not to have considered the complaint.

In referring the complaint, the National Student Ombudsman will be able to request that the provider investigate the complaint, and report back within a specified time on the outcome of the investigation and any actions it proposes to take to resolve the complaint.

The National Student Ombudsman would also be able to make recommendations based on a report it receives from a higher education provider. This means that if there are deficiencies in the provider's handling of the complaint, for example if the provider has failed to propose sufficient action to resolve the complaint, the National Student Ombudsman will be able to make recommendations without commencing a new investigation or requiring the student to complain a second time.

Restorative engagement

Where appropriate, the National Student Ombudsman can offer a voluntary restorative engagement process between a student and a provider. For example, this voluntary process could support reporters of gender-based violence and other forms of sexual violence to safely share their story with a representative of their higher education provider in a private restorative engagement session, facilitated by a highly experienced professional. This also provides the opportunity for the provider to acknowledge and respond to the student's personal story.

A fundamental principle of the restorative engagement process is that a student's privacy, safety and wellbeing are of paramount importance throughout their participation in the process.

Alternative dispute resolution

The National Student Ombudsman will be able to try to settle a complaint using an alternative dispute resolution process, such as mediation or conciliation. These processes involve an independent third party bringing the student and provider together to help resolve a dispute. Participation in an alternative dispute resolution process will always be voluntary for students, however the National Student Ombudsman will be able to direct a provider to participate.

If a provider is directed to participate, they will be required to do so in good faith. This includes participating genuinely and transparently and observing requirements of confidentiality. It will be an offence for a person who is directed to participate in an alternative dispute resolution process by the

National Student Ombudsman to fail to participate in all or part of that process, provided the complainant attends, or was willing to attend, the process.

Investigating a complaint

If, with the consent of the complainant, the National Student Ombudsman decides to investigate a complaint, it will inform the higher education provider before beginning an investigation. The National Student Ombudsman will work cooperatively with the provider wherever possible to investigate a complaint, but it will have coercive powers it can draw on if it needs to, including information gathering powers, the power to examine witnesses under oath or affirmation, and the power to enter premises and carry on an investigation.

If the National Student Ombudsman is of the opinion that the action taken by the higher education provider is contrary to law, unreasonable (including unreasonable delay, procedural deficiencies, flawed processes), unjust, oppressive or improperly discriminatory or in all the circumstances wrong, and there are steps that could be or should be undertaken in relation to the action, the National Student Ombudsman must report to the provider. This is discussed in more detail in the 'reports and recommendations' section below.

Own-motion investigations

The National Student Ombudsman will also have the power to undertake 'own motion' investigations, meaning the National Student Ombudsman can investigate an issue on its own initiative that isn't in response to a particular complaint. These investigations may relate to issues identified through complaints data, the media, or engagement with providers, civil society organisations or the Department of Education. The National Student Ombudsman can choose what to investigate and how an investigation should be conducted.

Reports and recommendations

Following completion of an investigation, whether in response to an individual complaint or an own-motion investigation, the National Student Ombudsman may make a report and include recommendations.

The report will include the reasons for the opinions set out in the report and any recommendations the National Student Ombudsman thinks fit to make. The National Student Ombudsman will be required to comply with rules of procedural fairness, this means that before finalising a report which includes criticism of a provider or a person, the National Student Ombudsman will give that provider or person an opportunity to make a submission. The National Student Ombudsman will not disclose the name of the complainant or other identifying information in the report unless the complainant has consented to the disclosure.

The National Student Ombudsman is able make any recommendation it thinks fit to make in a report. This might include, for example, the provider:

- reconsider a decision or action
- take appropriate action to resolve a complaint (for example, by providing additional support or adjustments for a student)
- make changes to improve policies and procedures, which will benefit students into the future.

These recommendations will be specific, measurable, achievable, results-oriented and have a specific timeframe for action or follow up. If the recommendations are in response to a student complaint, the student will also be informed of the recommendations. The National Student Ombudsman will be able to require information from providers to monitor their progress implementing recommendations.

Through the proposed National Code, providers would be required to implement the National Student Ombudsman's recommendations.

Referring a complaint to another body

The National Student Ombudsman will work cooperatively with state and territory ombudsmen and other relevant bodies, such as human rights, anti-discrimination and equal opportunities bodies. With the consent of a complainant, it will refer or direct all or part of a complaint to another body where that body is better placed to deal with a complaint. It will also be able to disclose relevant information to other bodies as part of the referral.

Referring a provider for compliance action

At any point during a complaint process or investigation the National Student Ombudsman will be able to share information with or refer a matter to TEQSA and the Department of Education, including if the National Student Ombudsman suspects the provider is failing to meet any regulatory obligations. Regulators could then review information the National Student Ombudsman has provided and consider whether an investigation or even enforcement action is necessary or appropriate.

This will include regulatory action in relation to new obligations that will be set out in the proposed National Code, once established. The National Code is subject to separate legislative consideration and consultation. More information is available on the Department of Education website at: www.education.gov.au/action-plan-addressing-genderbased-violence-higher-education.

Annual reporting

Annual reporting on the National Student Ombudsman's operations and performance of functions – in a manner that protects the privacy of students – will be publicly available and tabled in both Houses of Parliament. This will include reporting on the number and nature of complaints per higher education provider, which will enhance transparency and publicly hold providers to account.

The annual report will also include the National Student Ombudsman's observations about any trends in complaints or any broader issues arising from investigations, as well as improvements that could be made by higher education providers.

The National Student Ombudsman may also make public reports at other times throughout the year on its operations or the performance of its functions.

Outreach and education

The National Student Ombudsman will use outreach to build awareness and visibility among students and providers of the National Student Ombudsman and its role as an escalated complaints mechanism for students. The National Student Ombudsman will also undertake education activities to help providers build their complaint handling capabilities.

To be visible to students and providers, the National Student Ombudsman will, for example, host stalls at providers' orientation weeks and open days, explore ways to have a physical presence in all Australian capital cities and have ongoing digital outreach to students.

Future Policy Considerations

Cost Recovery

In implementing the National Student Ombudsman, the Department of Education will be developing charging arrangements for higher education providers to support the costs of this new function, consistent with the principles of the Australian Government Charging Framework. This work will be informed by consultation with the higher education sector. Any charging of higher education providers will not commence before the 2027 calendar year.

VET students

Consideration may be given to expanding the National Student Ombudsman to VET students over time. Further engagement with stakeholders, including states and territories, would occur on this at a suitable time.