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Inquiry into Antisemitism at Australian universities

Parliamentary Joint Committee on Human Rights

Submission by the Commonwealth Ombudsman, Iain Anderson

December 2024

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Introduction and summary

I welcome the opportunity to make a submission to the Parliamentary Joint Committee on Human Rights on its *Inquiry into Antisemitism at Australian Universities*.

As a result of the passage of the *Universities Accord (National Student Ombudsman) Act 2024*, from 1 February 2025 I will be the National Student Ombudsman (**NSO**). I will be assisted in this role by Ms Sarah Bendall, First Assistant Ombudsman, who will be the day-to-day operational lead for the NSO. Ms Bendall has extensive experience in dispute resolution, complaints and investigations and I welcome her to this role.

Ms Bendall is currently leading the implementation of this important new function, including by engaging widely with stakeholders such as Ms Jillian Segal AO, Special Envoy to Combat Antisemitism.

In this submission I outline the NSO's powers, discretions and intended way of working. With these tools, I aim to work constructively with universities with respect to any complaints to the NSO or investigations by the NSO about how universities are addressing antisemitism on campuses. I have adopted the International Holocaust Remembrance Alliance's (IHRA) working definition of antisemitism, in line with the position of the Australian Government.

A trauma-informed approach

One of the drivers for establishing the NSO were concerns about how universities were dealing with complaints about gender-based violence. Since then, concerns have been raised about how universities are dealing with complaints about antisemitism.

I recognise the profound and traumatic impact antisemitism can have upon individuals. The NSO will handle complaints, including complaints concerning antisemitism and complaints of any form of racial vilification, in a trauma-informed manner. This means creating an environment that does not re-traumatise, fosters safety and trust, encourages collaboration and is accessible. In practice, this will mean that the NSO will investigate complaints in confidence, will seek the complainant's consent when deciding what avenue to take and will provide students with information on the status and the outcome of their complaint.



The NSO's powers and discretions

The NSO will be a free, independent and impartial service for students to seek to resolve most grievances with their universities. The NSO would generally encourage a student to first ask their university to resolve a complaint. However, we have a discretion to accept complaints from students who have not raised the matter directly with their university. We may exercise this discretion in circumstances where, for example, a student does not feel safe raising it first with their provider.

Once received, broadly speaking, there are four ways the NSO can deal with a student's complaint:

- 1) Investigate the complaint.
- 2) Attempt to settle the complaint by using an alternative dispute resolution process, such as mediation or conciliation.
- 3) Conduct a restorative engagement process.
- 4) Refer the complaint to the university to investigate. The university will then be obliged to report the outcomes of this investigation and any actions they propose to take in response.

These options are not mutually exclusive, as the NSO has discretion to deal with complaints through one or more avenues. For example, if the NSO referred a complaint to the university and the university failed to investigate the complaint sufficiently, the NSO could still investigate the complaint itself. In addition, the NSO will be actively seeking to draw on complaints intelligence through the use of its functions to identify potential systemic improvements within universities and the higher education sector more broadly.

Investigating complaints

I would like to briefly outline the NSO's approach to investigations of complaints.

The NSO is empowered to investigate student complaints but will also have the power to investigate matters on its own motion. This means the NSO can proactively investigate systemic issues within universities, or across the higher education sector, and does not have to rely on a student making a complaint before investigating.



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All complaints are important. However, the NSO will have a discretion as to whether and how it investigates any given complaint.

When undertaking an investigation, the NSO will have information gathering powers similar to a royal commission, allowing us to compel universities to provide information and answer questions.

If the NSO investigates a complaint, it may form the opinion that actions by a university:

- appear to have been contrary to law
- were unreasonable, unjust, oppressive or improperly discriminatory
- were otherwise, in all the circumstances, wrong.

If satisfied that this is the case, the NSO can then make recommendations to the university to rectify the actions.

The NSO will not have the power to compel a university to implement its recommendations. However, should a university fail to take adequate and appropriate action within a reasonable time, the NSO can give a report of its investigation to the Education Minister, who would be required to table the report before the Parliament.

The NSO will also have the power to make public statements concerning the findings or outcomes of an investigation, if the NSO believes it in the public interest to do so. The NSO will not publish information identifying a complainant without their consent.

Both of these options create public accountability and transparency. They allow the community and the parliament to be informed of how universities are responding to the investigations and recommendations of the NSO.

Publishing complaints data

Once NSO commences, we will be able to collect and analyse complaints data to identify systemic issues or trends. Among other things, I would be empowered to publish in the NSO's annual reports, in relation to each university, the number of complaints we have received and the broad nature of those complaints. While we cannot currently predict the number or nature of complaints that we will receive or the investigations that we will carry out, we will be able to use these reporting powers to publish data about identified patterns of antisemitism or insights about universities' handling of complaints about antisemitism from those complaints and investigations.

