

Modernising and Strengthening TEQSA's Powers

Submission to the Department of Education

Submission by the Commonwealth Ombudsman, Iain Anderson

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Introduction and summary

I welcome the opportunity to contribute to the Department of Education's consultation on Modernising and Strengthening the Tertiary Education Quality and Standards Agency's Powers (the consultation).

The consultation seeks views on potential changes to the *Tertiary Education Quality and Standards Agency Act 2011* (the TEQSA Act) to strengthen TEQSA's powers to step in and act when it is justified in the public interest.

The National Student Ombudsman (NSO) is the independent oversight and complaints-handling body for students of TEQSA-registered higher education providers. The NSO has a broad remit, including student safety and welfare, racism, course administration, and the effectiveness of student complaints processes.

This submission responds to questions 12, 13 and 14 of the consultation paper, as they refer directly to potential ways in which the NSO could assist or support proposed reforms to the TEQSA Act.

Background

The NSO is a statutory function of the Office of the Commonwealth Ombudsman (the Office). The Commonwealth Ombudsman is also the NSO.

The purpose of the NSO is to:

- consider complaints from students about the actions of their higher education provider about a broad range of issues
- resolve complaints through a range of pathways including early resolution, referral back to the provider, formal investigations, alternative dispute resolution and restorative engagement
- give higher education providers advice and training about the best practice complaint handling.

The NSO aims to achieve its purpose by:

- independent and impartial consideration of complaints about the actions of higher education providers
- offering alternative dispute resolution and restorative engagement processes



- influencing higher education providers to be accountable, lawful, fair, transparent, and responsive, and
- referring higher education providers' actions to regulators when those providers may be in breach of their regulatory obligations.

Question 12— *What opportunities exist to streamline regulation between TEQSA, the Department of Education, the National Student Ombudsman, or other Commonwealth, State and Territory government bodies?*

The NSO is not a regulator: we cannot make binding decisions and we cannot enforce our decisions or impose penalties. We are an escalated complaint handler. The NSO may deal with complaints via several mechanisms including by conducting investigations and making comments, suggestions and recommendations, or by using alternative dispute resolution.

The NSO is committed to effective information sharing and referrals. For example, the NSO has signed a Memorandum of Understanding (the MOU) with TEQSA, and has exchanged letters with state and territory bodies to facilitate coordination, cooperation and information sharing¹.

The relationship between the NSO and TEQSA, to the extent it concerns regulation of the higher education sector, is defined by subsection 21AZG(1) of the *Ombudsman Act 1976* (the Ombudsman Act). This provides for NSO officers to disclose information to the Chief Executive Officer of TEQSA that is relevant to the functions, duties or exercise of powers of TEQSA. It is this power the NSO relies on to make TEQSA aware that a higher education provider may be in breach of their regulatory obligations. To date, the NSO has referred 1 matter to TEQSA for its consideration for regulatory action.

Question 13— *Should TEQSA's functions be broadened to allow better access to transfer complaints to other agencies, for example with the National Student Ombudsman?*

I am not aware of any limitations on TEQSA's ability to share information and transfer complaints to the NSO. The *Universities Accord (National Student Ombudsman) Act*

¹ The MOU and letters of exchange are published at: www.nso.gov.au/about-us/legislation-and-policy.

2024 amended the Ombudsman Act and the TEQSA Act to provide for, among other things, the disclosure of information between the NSO and TEQSA to assist each agency to perform its functions and exercise its powers. In particular, the TEQSA Act was amended to insert a new section 194A information sharing provision from TEQSA to the NSO which enables TEQSA to share complaints with the NSO².

TEQSA has discretion to refer individual student complaints to the NSO subject to the student's consent, if the matter and the student's desired resolution would be better handled by the NSO. To date, the NSO has received two complaint referrals from TEQSA.

The MOU mentioned in question 12 also sets out, among other things, the types of information each agency will share.³

Question 14—How could the TEQSA Act be amended to ensure providers are required to implement recommendations made by the National Student Ombudsman?

At a general level, it is our experience across our various jurisdictions that entities tend to accept and implement our recommendations. The Office's *Actions Speak* report reviewed compliance with recommendations and suggestions made from 1 July 2021 to 21 October 2024 and found that 92% of recommendations and suggestions made in investigation reports were accepted.⁴

At the same time, noting that the NSO is a very new function and that the tertiary sector is accustomed to a great deal of independence, we understand the rationale for ensuring that providers can be required to implement NSO recommendations.

In the NSO context, we are experiencing issues during engagements with some providers such as delays responding to our inquiries. However, overall, providers' engagement with us is constructive.

² Paragraph 342 of the Explanatory Memorandum to the Universities Accord (National Student Ombudsman) Bill 2024 confirms this is an intent of the new section 194A.

³ [Memorandum of Understanding between the Commonwealth Ombudsman as the National Student Ombudsman and Tertiary Education Quality and Standards Agency.](#)

The *Universities Accord (National Higher Education Code to Prevent and Respond to Gender-based Violence) Act 2025* already provides that the National Code may impose a requirement on higher education providers to give effect to NSO recommendations relating to gender-based violence.⁵

If, however, a regulatory requirement is applied to all NSO recommendations, there would need to be detailed consideration of all potential implications, including but not limited to:

1. any overlap that would create with the Code, and how that should be managed
2. how the Threshold Standards should be amended to capture the expansive nature of potential NSO recommendations.

When making recommendations they will frequently be expressed in terms of a principle and a desired outcome, rather than a prescriptive statement.

⁵ Section 17(p) of the *Universities Accord (National Higher Education Code to Prevent and Respond to Gender-based Violence) Act 2025*. The Code is not yet made.