



Universities Accord (National Student Ombudsman) Act 2024

No. 108, 2024

An Act to amend the *Ombudsman Act 1976*, and for related purposes

Note: An electronic version of this Act is available on the Federal Register of Legislation (<https://www.legislation.gov.au/>)

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No. 108, 2024

An Act to amend the *Ombudsman Act 1976*, and for related purposes

[Assented to 5 December 2024]

The Parliament of Australia enacts:

1 Short title

This Act is the *Universities Accord (National Student Ombudsman) Act 2024*.

No. 108,
2024

Universities Accord (National Student Ombudsman) Act 2024

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2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	5 December 2024
2. Schedule 1, Parts 1 to 3	The later of: (a) 1 February 2025; and (b) the day after the end of the period of 1 month beginning on the day this Act receives the Royal Assent.	1 February 2025 (paragraph (a) applies)
3. Schedule 1, Part 4	The later of: (a) immediately after the commencement of the provisions covered by table item 2; and (b) immediately after the commencement of Part 2 of Schedule 1 to the <i>Intelligence Services Legislation Amendment Act 2024</i> . However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—National Student Ombudsman

Part 1—Main amendments

Ombudsman Act 1976

1 Title

Omit “and a VET Student Loans Ombudsman”, substitute “, a VET Student Loans Ombudsman and a National Student Ombudsman”.

2 Subsection 3(1)

Insert:

alternative dispute resolution process means a procedure or service that:

- (a) is for the resolution of disputes, including mediation and conciliation (but not including arbitration or court processes or services); and
- (b) does not involve the exercise of the judicial power of the Commonwealth.

Commonwealth entity has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

constitutional corporation means a corporation to which paragraph 51(xx) of the Constitution applies.

constitutional provider means:

- (a) a constitutional corporation; or
- (b) a body corporate that is established by or under a law of the Commonwealth or a Territory.

engage in conduct means:

- (a) do an act; or
- (b) omit to do an act.

excluded action has the meaning given by subsections 21AD(3) and (4).

Higher Education Department means the Department administered by the Higher Education Minister.

Higher Education Minister means the Minister administering the TEQSA Act.

higher education officer, of a higher education provider, means a person who:

- (a) is an officer or employee of the provider; or
- (b) performs services for or on behalf of the provider (other than a person covered paragraph (a)).

higher education principal executive officer, of a higher education provider, means the person who has executive responsibility for the operation of the provider.

higher education provider means a constitutional provider that is:

- (a) registered under Part 3 of the TEQSA Act; and
- (b) listed on the National Register of Higher Education Providers under paragraph 198(1)(a) of that Act.

higher education student, of a higher education provider, means:

- (a) a student enrolled in any course of study with the higher education provider (other than a student enrolled only in a VET course with the provider); or
- (b) a prospective student, or a former student, in relation to any course of study (other than a VET course) with the higher education provider.

Note: A course of study includes, for example, an enabling course and a microcredential course.

National Student Ombudsman Rules means rules made under section 21AZL.

restorative engagement process means a facilitated process that:

- (a) is for the purpose of a complainant engaging with a higher education officer of a higher education provider that is the subject of the complainant's complaint to have the complaint acknowledged; and
- (b) does not involve the exercise of the judicial power of the Commonwealth.

State or Territory body includes a Department of State, or an authority or agency, of a State or Territory.

takes a reprisal: see section 35D.

TEQSA (short for Tertiary Education Quality and Standards Agency) means the body established by section 132 of the TEQSA Act.

TEQSA Act means the *Tertiary Education Quality and Standards Agency Act 2011*.

VET course has the same meaning as in the *National Vocational Education and Training Regulator Act 2011*.

3 After subsection 3(6D)

Insert:

- (6E) For the purposes of this Act, action that is taken by a person is deemed to be have been taken by a higher education provider if the person takes, or purports to take, the action because the person is the higher education principal executive officer, or a higher education officer, of the provider, whether or not:
- (a) the action is taken for or in connection with, or as incidental to:
 - (i) performing services for or on behalf of the provider; or
 - (ii) carrying out the person's powers, duties and functions as an employee in the provider's service, or as an officer of the provider; or
 - (b) the taking of the action is within the person's duties as the higher education principal executive officer, or a higher education officer, of the provider.

4 At the end of paragraph 4A(e)

Add:

- ; and (vii) the functions of the National Student Ombudsman referred to in section 21AC.

5 After Part IIE

Insert:

Part IIF—National Student Ombudsman

Division 1—Introduction

21AA Simplified outline of this Part

There is to be a National Student Ombudsman.

The National Student Ombudsman's main functions are:

- (a) to deal with complaints about actions taken by higher education providers; and
- (b) to conduct investigations into actions taken by higher education providers, on the National Student Ombudsman's own initiative; and
- (c) to give higher education providers advice and training on handling complaints.

However, the National Student Ombudsman cannot deal with complaints about, or investigate, certain kinds of actions (called excluded actions) taken by higher education providers.

Complaints can be made to the National Student Ombudsman by higher education students of higher education providers.

The National Student Ombudsman can deal with complaints by referring the complaint to the higher education provider for investigation, by using alternative dispute resolution processes or restorative engagement processes or by conducting an investigation.

Following an investigation, the National Student Ombudsman can give a report to a higher education provider with recommendations. The National Student Ombudsman will also prepare annual reports and, as necessary, periodic reports of the operations of the National Student Ombudsman.

The National Student Ombudsman has information gathering powers under this Part and other powers under this Act (as applied by this Part).

This Part also deals with miscellaneous matters, including the power to make National Student Ombudsman Rules.

Division 2—Establishment and functions

21AB Establishment of office of National Student Ombudsman

- (1) For the purposes of this Act, there is to be a National Student Ombudsman.
- (2) The office of National Student Ombudsman is to be held by the person who holds the office of Commonwealth Ombudsman.
- (3) The reference in subsection (2) to the person who holds the office of Commonwealth Ombudsman includes a reference to a person for the time being acting in that office because of an appointment under section 29.

21AC Functions of National Student Ombudsman

The National Student Ombudsman has the following functions:

- (a) dealing with complaints under Division 3 of this Part;
- (b) conducting investigations under Division 4 of this Part;
- (c) reporting and making recommendations under Division 5 of this Part;
- (d) giving higher education providers advice and training about the best practice for the handling of complaints made by, or on behalf of, higher education students;
- (e) such other functions conferred on the National Student Ombudsman by this Act or another Act, or a legislative instrument made under this Act or another Act.

Division 3—Complaints

Subdivision A—Complaints to the National Student Ombudsman

21AD Making a complaint

Who can make a complaint

- (1) A complaint may be made to the National Student Ombudsman against a higher education provider:
 - (a) by a higher education student of the provider; or
 - (b) on behalf of a higher education student of the provider.

Grounds for complaint

- (2) The complaint may be about any action (other than an excluded action) taken by a higher education provider.
- (3) Each of the following actions taken by a higher education provider is an **excluded action**:
 - (a) any action taken with respect to a person employed by a higher education provider, being action taken in relation to that employment;
 - (b) any action taken with respect to the appointment of a person to an office of a higher education provider;
 - (c) any action to the extent that the action involves the exercise of academic judgement;
 - (d) any action to the extent that the action is taken with respect to:
 - (i) a VET course; or
 - (ii) a student who is not a higher education student of the provider;
 - (e) any other kind of action prescribed by the National Student Ombudsman Rules for the purposes of this paragraph.
- (4) Despite subsection (3), an action is not an **excluded action** if the action is an action of a kind prescribed by the National Student Ombudsman Rules for the purposes of this subsection.

21AE Complaints taken to be made to the National Student Ombudsman

Complaints transferred from a prescribed body

- (1) A complaint, or part of a complaint, about an action taken by a higher education provider is taken to be a complaint made to the National Student Ombudsman under this Part if:
 - (a) the complaint was made to a prescribed body by, or on behalf of, a higher education student of the provider; and
 - (b) the prescribed body transfers the complaint, or part of the complaint, to the National Student Ombudsman in accordance with a law of the Commonwealth, a State or a Territory.

Note: See also subsection 21AZF(1) for when complaints made to the Commonwealth Ombudsman, Overseas Students Ombudsman or VET Student Loans Ombudsman can be dealt with as complaints made to the National Student Ombudsman under this Part.

Transfer of complaints and sharing of information and documents

- (2) A prescribed body may transfer to the National Student Ombudsman a complaint, or part of a complaint, about an action taken by a higher education provider that was made to the prescribed body by, or on behalf of, a higher education student of the provider.
- (3) A prescribed body is authorised to disclose to the National Student Ombudsman any information or documents in the possession, or under the control, of the prescribed body that relate to a complaint of a kind mentioned in subsection (2) for the purpose of:
 - (a) transferring, or determining whether to transfer, the complaint to the National Student Ombudsman; or
 - (b) assisting the National Student Ombudsman to perform its functions or duties or exercise its powers under this Part in relation to action taken by higher education providers.

Note: This subsection constitutes an authorisation for the purposes of the *Privacy Act 1988* and other laws.

- (4) Subsections (2) and (3) have effect despite anything in another law of the Commonwealth, or a law of a State or Territory:

- (a) whether written or unwritten; and
- (b) whether enacted before or after the commencement of this Part.

Definitions

- (5) In this section:

prescribed body means:

- (a) an Ombudsman of a State; or
- (b) a State or Territory body prescribed by the National Student Ombudsman Rules for the purposes of this paragraph; or
- (c) a Commonwealth entity prescribed by the National Student Ombudsman Rules for the purposes of this paragraph.

Subdivision B—Dealing with complaints

21AF Initial receipt of complaint

On receiving a complaint against a higher education provider, the National Student Ombudsman may:

- (a) inform the higher education provider of the nature of the complaint; and
- (b) make inquiries under section 21AZ, or give a notice under section 21AZA, in relation to the higher education provider.

21AG Ways of dealing with complaints

- (1) The National Student Ombudsman may deal with a complaint made under this Part about an action taken by a higher education provider in one or more of the following ways:
 - (a) referring the complaint to the higher education provider under Subdivision C of this Division;
 - (b) using an alternative dispute resolution process under Subdivision D of this Division;
 - (c) using a restorative engagement process under Subdivision E of this Division;
 - (d) conducting an investigation under Division 4 of this Part.

- (2) The National Student Ombudsman must not take any action mentioned in subsection (1) unless the complainant agrees to the action being taken.
- (3) The National Student Ombudsman must not take, or continue to take, any action mentioned in subsection (1) if the complainant withdraws the complaint.
- (4) The National Student Ombudsman must not take any action mentioned in subsection (1) if the complaint is about an excluded action.

21AH Referral of matters raised in complaints

- (1) The National Student Ombudsman may refer a matter raised in a complaint made under this Part to another Commonwealth entity or a State or Territory body if:
 - (a) the National Student Ombudsman is of the opinion that the matter could be dealt with more effectively or conveniently by the other Commonwealth entity or the State or Territory body; and
 - (b) the complainant agrees to the matter being referred.
- (2) If the National Student Ombudsman refers the matter to another Commonwealth entity or a State or Territory body, the National Student Ombudsman must:
 - (a) give written notice to the complainant of the referral; and
 - (b) give the Commonwealth entity or the State or Territory body any information or documents that relate to the complaint and that are in the possession, or under the control, of the National Student Ombudsman.

21AJ Deciding not to deal with a complaint

The National Student Ombudsman may decide not to deal, or not to continue to deal, with a complaint made under this Part about an action taken by a higher education provider if, in the opinion of the National Student Ombudsman:

- (a) the complaint is frivolous or vexatious, or was not made in good faith; or

- (b) the complainant does not have a sufficient interest in the subject matter of the complaint; or
- (c) the complainant has not yet raised the subject matter of the complaint with the higher education provider; or
- (d) the action is an excluded action; or
- (e) the complaint has been, is being, or is to be dealt with by another Commonwealth entity, an Ombudsman of a State or a State or Territory body; or
- (f) the action has been, is being, or is to be reviewed by a court or by a tribunal constituted by or under an enactment; or
- (g) to deal, or continue to deal, with the complaint is not warranted having regard to all the circumstances.

Subdivision C—Referral of complaint to higher education provider

21AK Referral to the subject of the complaint

The National Student Ombudsman may refer a complaint made under this Part about action taken by a higher education provider to the provider and request the provider:

- (a) to investigate the complaint; and
- (b) to report to the National Student Ombudsman on the outcome of the investigation and any action that the provider proposes to take as a result, before the end of the period specified in the request.

Note: The National Student Ombudsman must have the complainant's agreement to act under this section (see subsection 21AG(2)).

21AL Recommendations as a result of referral of complaint to higher education provider

After receiving a report from a higher education provider after referral of a complaint to the provider for investigation under section 21AK, the National Student Ombudsman may make recommendations to the higher education principal executive officer of the provider that the National Student Ombudsman thinks fit to make.

Subdivision D—Alternative dispute resolution

21AM Conducting an alternative dispute resolution process

- (1) The National Student Ombudsman may try to settle a complaint made under this Part by using an alternative dispute resolution process conducted by:
 - (a) the National Student Ombudsman; or
 - (b) a person engaged by the Ombudsman under section 31A.

Note: The National Student Ombudsman must have the complainant's agreement to act under this section and cannot continue if the complaint is withdrawn (see subsections 21AG(2) and (3)).

- (2) A person's participation in an alternative dispute resolution may be:
 - (a) voluntary; or
 - (b) required by a direction given to the person by the National Student Ombudsman under section 21AN.
- (3) A person required to participate in an alternative dispute resolution process must act in good faith in relation to the conduct of the alternative dispute resolution process.

Alternative dispute resolution practitioners

- (4) Subject to section 35, a person engaged by the Ombudsman under section 31A to conduct an alternative dispute resolution process under this Subdivision is not personally liable to an action or other proceeding for damages in relation to anything done or omitted to be done, reasonably and in good faith, in or in relation to the conduct of the alternative dispute resolution process.

21AN Participation in alternative dispute resolution process may be compulsory

- (1) The National Student Ombudsman may direct a higher education provider that is the subject of a complaint made under this Part to participate in an alternative dispute resolution process.

- (2) The National Student Ombudsman Rules may prescribe matters to which the National Student Ombudsman is to have regard when deciding whether or not to give a direction under subsection (1).
- (3) The direction must:
- (a) be in writing; and
 - (b) name either or both of the following:
 - (i) the higher education provider that is subject of the complaint;
 - (ii) a higher education officer of that higher education provider; and
 - (c) be given to those named in it; and
 - (d) specify the time of the alternative dispute resolution process, which must not be earlier than 14 days after the day the direction is given; and
 - (e) specify the place of the alternative dispute resolution process.

Note: Subsection 33(3) of the *Acts Interpretation Act 1901* has the effect that the direction may be varied or revoked.

- (4) A direction under subsection (1) is not a legislative instrument.

Offence

- (5) A person commits an offence if:
- (a) the person is directed under subsection (1) to participate in an alternative dispute resolution process; and
 - (b) the other party to the alternative dispute resolution process attends, or was willing to attend, the alternative dispute resolution process; and
 - (c) the person fails to participate in part or all of the alternative dispute resolution process.

Penalty: 10 penalty units.

21AP Ceasing alternative dispute resolution process

Compulsory alternative dispute resolution

- (1) An alternative dispute resolution process in which a higher education provider is directed to participate ceases:

- (a) if the higher education provider and the complainant agree to settle the matter; or
 - (b) if the National Student Ombudsman concludes that the matter cannot be settled by using an alternative dispute resolution process.
- (2) The National Student Ombudsman Rules may prescribe matters to which the National Student Ombudsman is to have regard before concluding that a matter cannot be settled by using an alternative dispute resolution process.

Reports

- (3) A person engaged by the Ombudsman under section 31A to conduct an alternative dispute resolution process under this Subdivision must, as soon as practicable after the alternative dispute resolution process is conducted or should have been conducted, report to the National Student Ombudsman about:
- (a) whether the alternative dispute resolution was conducted; and
 - (b) if the alternative dispute resolution failed—the reasons for the failure; and
 - (c) if the parties agreed to settle the complaint—the terms of the settlement, including any action to be taken.

21AQ Admissibility of things said in alternative dispute resolution process

- (1) Evidence of anything said, or any admission made, during participation in an alternative dispute resolution process under section 21AM is not admissible:
- (a) in any court (whether exercising federal jurisdiction or not); or
 - (b) in any proceedings before a person authorised by a law of the Commonwealth or of a State or Territory, or by the consent of the parties, to hear evidence.
- (2) This section applies whether or not a higher education provider is directed to participate in the alternative dispute resolution process.

Subdivision E—Restorative engagement process

21AR Conducting a restorative engagement process

- (1) The National Student Ombudsman may conduct a restorative engagement process in relation to a complaint made under this Part about an action taken by a higher education provider.

Note: The National Student Ombudsman must have the complainant's agreement to act under this section and cannot continue if the complaint is withdrawn (see subsections 21AG(2) and (3)).

- (2) A person's participation in a restorative engagement process is voluntary.

21AS Admissibility of things said in restorative engagement process

Evidence of anything said, or any admission made, during participation in a restorative engagement process under section 21AR is not admissible:

- (a) in any court (whether exercising federal jurisdiction or not);
or
- (b) in any proceedings before a person authorised by a law of the Commonwealth or of a State or Territory, or by the consent of the parties, to hear evidence.

Division 4—Investigations

21AT Investigations

- (1) The National Student Ombudsman may investigate action taken by a higher education provider:
 - (a) on complaint made under this Part; or
 - (b) on the National Student Ombudsman's own initiative.
- (2) However, the National Student Ombudsman must not investigate an excluded action.

21AU Conduct of investigations

Provider to be informed

- (1) The National Student Ombudsman must, before starting an investigation under this Part in relation to action taken by a higher education provider, inform the higher education principal executive officer of the provider that the action is to be investigated.

Investigations to be in private

- (2) An investigation under this Division must be conducted in private and, subject to this Act, in such manner as the National Student Ombudsman thinks fit.

Right to make submissions

- (3) The National Student Ombudsman must not make a report under section 21AV that sets out opinions that are, either expressly or impliedly, critical of a higher education provider or a higher education officer of the provider unless, before completing an investigation under this Division, the National Student Ombudsman has:
 - (a) if the opinions relate to the higher education provider—afforded the higher education principal executive officer of the provider the opportunity to make written submissions about the matter that is the subject of the investigation as the higher education principal executive officer thinks fit; or
 - (b) if the opinions relate to a higher education officer of the provider—afforded the higher education officer the opportunity to make written submissions about the matter that is the subject of the investigation as the higher education officer thinks fit.

Division 5—Reporting by the National Student Ombudsman

21AV Reports to higher education providers

- (1) This section applies if:
-

- (a) an investigation under this Part into action taken by a higher education provider has been completed; and
 - (b) the National Student Ombudsman is of the opinion that the action taken:
 - (i) appears to have been contrary to law; or
 - (ii) was unreasonable, unjust, oppressive or improperly discriminatory; or
 - (iii) was otherwise, in all the circumstances, wrong; and
 - (c) the National Student Ombudsman is of the opinion that:
 - (i) some particular action could be, and should be, taken to rectify, mitigate or alter the effects of the action taken; or
 - (ii) a policy or practice on which the action taken was based should be altered; or
 - (iii) reasons should have been, but were not, given for the action taken; or
 - (iv) any other thing should be done in relation to the action taken.
- (2) The National Student Ombudsman must report accordingly to the higher education provider.
- (3) The National Student Ombudsman:
- (a) must include in the report the National Student Ombudsman's reasons for the opinions specified in the report; and
 - (b) may also include in the report any recommendations the National Student Ombudsman thinks fit to make.
- (4) The National Student Ombudsman may ask the higher education provider to give the National Student Ombudsman, within a specified time, particulars of any action that the higher education provider proposes to take with respect to the matters and recommendations included in the report.
- (5) The higher education provider may give the National Student Ombudsman comments about the report.

- (6) The National Student Ombudsman may give a copy of the report, and any comments given under subsection (5), to one or more of the following:
- (a) the Higher Education Minister;
 - (b) the Secretary of the Higher Education Department;
 - (c) the Chief Executive Officer of TEQSA.

21AW Higher Education Minister to table reports about higher education providers in Parliament

- (1) This section applies if:
- (a) the National Student Ombudsman has given a report to a higher education provider under section 21AV; and
 - (b) in the opinion of the National Student Ombudsman, the higher education provider has not taken adequate and appropriate action in respect of the matters and recommendations included in the report within a reasonable time after the report was given to the provider.
- (2) The National Student Ombudsman may:
- (a) give to the Higher Education Minister a copy of the report and any comments given under subsection 21AV(5) (if not already given to that Minister under section 21AV); and
 - (b) request the Higher Education Minister to cause copies of the report and any comments to be laid before each House of the Parliament.
- (3) If the National Student Ombudsman makes a request under paragraph (2)(b), the Higher Education Minister must cause copies of the report and any comments to be laid before each House of the Parliament within 15 sitting days of that House after the Higher Education Minister receives the request.

21AX Reports of the National Student Ombudsman

Annual and other reports

- (1) As soon as practicable after the end of each financial year, the National Student Ombudsman must give an annual report to the Minister administering this Act, for presentation to the Parliament,

on the operations of the National Student Ombudsman during that financial year.

- (2) The National Student Ombudsman may, from time to time, give the Minister administering this Act, for presentation to the Parliament, a report:
 - (a) on the operations of the National Student Ombudsman during a part of a year; or
 - (b) in relation to any matter relating to, or arising in connection with, the exercise of the powers, or the performance of the functions, of the National Student Ombudsman.
- (3) The National Student Ombudsman may also give a copy of a report under subsection (1) or (2) to:
 - (a) the Higher Education Minister; or
 - (b) the Secretary of the Higher Education Department.
- (4) Subsections (1), (2) and (3) do not affect the powers and duties of the National Student Ombudsman under section 21AV or 21AW.

Tabling and inclusion in other reports

- (5) If the National Student Ombudsman gives a report to the Minister administering this Act under subsection (1) or (2), the Minister must cause the report to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives the report.
- (6) A report under this section relating to the operations of the National Student Ombudsman during a period may be included in a report under:
 - (a) section 19; or
 - (b) section 46 of the *Public Governance, Performance and Accountability Act 2013*;relating to the operations of the Ombudsman during that period.

Content of report

- (7) A report under this section on the operations of the National Student Ombudsman during a period must:

- (a) set out the number and nature of complaints made to the National Student Ombudsman under this Part during that period; and
- (b) in relation to each higher education provider for which a complaint was made to the National Student Ombudsman under this Part—set out:
 - (i) the number of complaints made to the National Student Ombudsman during that period; and
 - (ii) the nature of the complaints made to the National Student Ombudsman during that period; and
- (c) if the National Student Ombudsman has conducted any investigations under paragraph 21AT(1)(a)—set out:
 - (i) the number of such investigations started during that period; and
 - (ii) the number of such investigations completed during that period; and
- (d) if the National Student Ombudsman has conducted any investigations under paragraph 21AT(1)(b)—set out:
 - (i) the number of such investigations started during that period; and
 - (ii) the number of such investigations completed during that period; and
- (e) set out details of recommendations made during that period in reports under section 21AV; and
- (f) if the National Student Ombudsman is aware of any actions taken by higher education providers in response to recommendations made in reports under section 21AV—set out details of such actions taken during that period; and
- (g) if the National Student Ombudsman has referred any complaints made under this Part to a higher education provider for investigation and report under Subdivision C of Division 3 of this Part—set out:
 - (i) the number of complaints referred under that Subdivision during that period; and
 - (ii) the number of reports provided under that Subdivision to the National Student Ombudsman during that period; and

- (h) if the National Student Ombudsman has tried to settle any complaints made under this Part using an alternative dispute resolution process under Subdivision D of Division 3 of this Part—set out:
 - (i) the number of such alternative dispute resolution processes started during that period; and
 - (ii) the number, and outcome, of such alternative dispute resolution processes concluded during that period; and
 - (i) if the National Student Ombudsman has used a restorative engagement process under Subdivision E of Division 3 of this Part—set out:
 - (i) the number of such restorative engagement processes started during that period; and
 - (ii) the number of such restorative engagement processes concluded during that period; and
 - (j) set out details of any action that the National Student Ombudsman took during the period to promote best practice in handling of complaints by higher education providers; and
 - (k) set out details of the National Student Ombudsman’s observations (if any) during the period regarding the following:
 - (i) any trends in complaints;
 - (ii) any broader issues that arise from investigations;
 - (iii) any improvements that could be made to the handling of complaints made by higher education students.
- (8) A report under this section on the operations of the National Student Ombudsman during a period may set out any other matter relevant to the operations of the National Student Ombudsman during that period.

21AY Disclosure of identifying information in reports

The National Student Ombudsman must not, in a report under section 21AV or 21AX, disclose the name of a complainant, or any other information that would enable a complainant to be identified, unless the complainant has consented to the disclosure.

Division 6—Other powers and duties of the National Student Ombudsman

Subdivision A—Information gathering powers

21AZ Inquiries

The National Student Ombudsman may obtain such information, and make such inquiries, as the National Student Ombudsman thinks fit for the purposes of:

- (a) determining whether the National Student Ombudsman is authorised to deal with a complaint or to conduct an investigation under this Part; or
- (b) determining whether, and how, to deal with a complaint under this Part; or
- (c) determining whether to conduct an investigation on the National Student Ombudsman's own initiative under this Part; or
- (d) dealing with a complaint, or conducting an investigation, under this Part; or
- (e) considering whether a higher education provider has taken adequate and appropriate action in respect of any recommendations:
 - (i) made to the higher education provider under section 21AL; or
 - (ii) included in a report given to the higher education provider under section 21AV.

21AZA Notices requiring information, documents or attendance to answer questions

Notices

- (1) The National Student Ombudsman may give a person written notice requiring the person to do one or more of the following:
 - (a) give to the National Student Ombudsman information specified in the notice;
 - (b) produce to the National Student Ombudsman any documents or other records specified in the notice;

- (c) attend before the National Student Ombudsman, or an authorized person, to answer questions.
- (2) However, the National Student Ombudsman must not give a notice to a person under subsection (1) unless:
- (a) the National Student Ombudsman reasonably believes that the person is capable of giving the information, producing the documents or records or answering the questions; and
 - (b) the information, documents, records or attendance to answer questions is relevant to:
 - (i) determining whether, and how, to deal with a complaint under this Part; or
 - (ii) determining whether to conduct an investigation on the National Student Ombudsman’s own initiative under this Part; or
 - (iii) dealing with a complaint, or conducting an investigation, under this Part; or
 - (iv) considering whether a higher education provider has taken adequate and appropriate action in respect of any recommendations made to the higher education provider under section 21AL or included in a report given to the higher education provider under section 21AV.
- (3) A notice under subsection (1) must:
- (a) for a notice requiring the giving of information or production of documents or other records—specify a reasonable period within which the person must comply with the notice (which must be at least 14 days after the day the notice is given); and
 - (b) for a notice requiring attendance to answer questions—include the following information:
 - (i) the date and time for attendance (which must be at least 14 days after the day the notice is given);
 - (ii) the location for attendance; and
 - (c) include any other information prescribed by the National Student Ombudsman Rules for the purposes of this paragraph.

Self-incrimination etc.

- (4) An individual is not excused from giving information, producing a document or other record or answering a question in accordance with a notice under subsection (1) on the ground that giving the information, producing the document or record or answering the question might tend to incriminate the individual in relation to an offence.

Note: A body corporate is not entitled to claim the privilege against self-incrimination.

- (5) However:

- (a) the information given, document or other record produced or answer given; and
- (b) the giving of the information, the production of the document or record or the answering of the question; and
- (c) any information, document or thing obtained as a direct or indirect consequence of the giving of the information, the production of the document or other record or the answering of the question;

are not admissible in evidence against the individual in criminal proceedings other than proceedings for an offence against section 137.1, 137.2 or 149.1 of the *Criminal Code* that relates to this section.

- (6) If, at general law, an individual would otherwise be able to claim the privilege against self-exposure to a penalty (other than a penalty for an offence) in relation to giving information, producing a document or other record or answering a question under this section, the individual is not excused from giving the information, producing the document or record or answering the question under this section on that ground.

Note: A body corporate is not entitled to claim the privilege against self-exposure to a penalty.

Public interest grounds etc.

- (7) An individual is not excused from giving information, producing a document or other record or answering a question in accordance with a notice under subsection (1) on the ground that doing so:
- (a) would disclose legal advice given to any person; or

- (b) would disclose a communication that is protected against disclosure by legal professional privilege; or
 - (c) would otherwise be contrary to the public interest.
- (8) Subsection (7) does not otherwise affect a claim of legal professional privilege that anyone may make in relation to that information, document or other record.

Inspecting, copying and retaining documents or records

- (9) The National Student Ombudsman may:
 - (a) inspect a document or other record produced under this section; and
 - (b) make and retain copies of, or take and retain extracts from, such a document or record.
- (10) The National Student Ombudsman may take possession of a document or other record produced under this section and retain it for as long as is reasonably necessary.
- (11) The person otherwise entitled to possession of a document or other record produced under this section is entitled to be supplied, as soon as practicable, with a copy certified by the National Student Ombudsman to be a true copy.
- (12) The certified copy must be received in all courts and tribunals as evidence as if it were the original.
- (13) Until a certified copy is supplied, the National Student Ombudsman must provide the person otherwise entitled to possession of the document or other record, or a person authorised by that person, reasonable access to the document or record for the purposes of inspecting and making copies of the whole or a part of the document or record.

21AZB Responding to inquiries and notices

Authorisation

- (1) A person is authorised to give information, produce documents or other records and answer questions in response to:
 - (a) inquiries made under section 21AZ; or

(b) a notice given under section 21AZA.

Note: This subsection constitutes an authorisation for the purposes of the *Privacy Act 1988* and other laws.

- (2) The authorisation in subsection (1) has effect despite anything in another law of the Commonwealth, or a law of a State or Territory:
- (a) whether written or unwritten; and
 - (b) whether enacted before or after the commencement of this Part.

Liability for a penalty

- (3) A person is not liable to any penalty under the provisions of any other law of the Commonwealth, or a law of a State or Territory, by reason of the person giving information, producing documents or other records or answering questions in response to:
- (a) inquiries made under section 21AZ; or
 - (b) a notice given under section 21AZA.

Subdivision B—Application of Act to National Student Ombudsman

21AZC Application of certain provisions of the Act

Application of certain provisions—general

- (1) Subject to this section, the provisions covered by subsection (2) apply in relation to the National Student Ombudsman as if:
- (a) a reference in any of those provisions to the Ombudsman or the Commonwealth Ombudsman were a reference to the National Student Ombudsman; and
 - (b) a reference in any of those provisions to a Department or a prescribed authority were a reference to a higher education provider; and
 - (c) a reference in any of those provisions to a principal officer of a Department or a prescribed authority were a reference to the higher education principal executive officer of a higher education provider; and

- (d) a reference in any of those provisions to an officer of a Department or a prescribed authority were a reference to a higher education officer of a higher education provider.
- (2) This subsection covers the following provisions:
- (a) the definition of *authorized person* in subsection 3(1);
 - (b) section 7 (complaints);
 - (c) section 11A (powers of Federal Court of Australia), other than subsections 11A(1) and (5);
 - (d) section 12 (complainant and Department etc. to be informed);
 - (e) section 13 (power to examine witnesses);
 - (f) section 14 (power to enter premises);
 - (g) section 31 (staff), other than subsection 31(2);
 - (h) Part IV (miscellaneous), other than the following:
 - (i) subsections 34(1) to (3) (delegation);
 - (ii) paragraphs 35(1)(e) and (f) and subparagraph 35(3)(b)(ia) (officers to observe confidentiality).

Application of section 7—complaints

- (3) Section 7 applies as if a reference to investigating a complaint were a reference to dealing with a complaint as mentioned in subsection 21AG(1) (ways of dealing with complaints).

Application of section 11A—powers of Federal Court of Australia

- (4) Section 11A applies as if subsection 11A(2) were omitted and the following subsection substituted:
- “(2) If a person fails to comply with a requirement made by the National Student Ombudsman by notice under section 21AZA to give information, produce documents or other records or attend to answer questions, the National Student Ombudsman may make an application to the Federal Court of Australia for an order directing that person to:
- (a) give the information, or produce the documents or other records, to the National Student Ombudsman within such period as specified in the order; or

(b) attend before the National Student Ombudsman, or an authorized person, to answer questions at such location, and on such date and at such time, as are specified in the order.”.

- (5) Subsection 11A(4) applies as if a reference to the Minister were a reference to the Minister and the Higher Education Minister.

Application of section 12—complainant and Department etc. to be kept informed

- (6) Subsections 12(4) and (5) apply as if a reference to section 15 were a reference to section 21AV (reports to higher education providers).

Application of section 13—power to examine witnesses

- (7) Section 13 applies as if:
- (a) a reference to section 9 were a reference to section 21AZA (notice requiring information, documents or attendance to answer questions); and
 - (b) a reference to subsection 9(2) were a reference to subsection 21AZA(1) (notice requiring information, documents or attendance to answer questions).

Application of section 14—power to enter premises

- (8) Section 14 applies as if:
- (a) paragraph 14(1)(a) referred to a place that is occupied by a higher education provider; and
 - (b) the reference to the operation of section 9 were a reference to the operation of section 21AZA (notice requiring information, documents or attendance to answer questions).

Application of section 35AA—disclosure of information and documents to National Anti-Corruption Commissioner or Inspector

- (9) Section 35AA applies as if a reference to paragraph 5(1)(b) were a reference to paragraph 21AT(1)(b) (investigations).

Application of section 35A—Disclosure of information by Ombudsman

- (10) Section 35A applies as if:
- (a) a reference to subsection 8(5) were a reference to subsection 21AU(3) (right to make submissions); and
 - (b) a reference to subsection 8(2) were a reference to subsection 21AU(2) (investigations to be in private).

Application of definition of listed disclosure method

- (11) The definition of **listed disclosure method** in subsections 35B(2) and 35C(2) applies as if:
- (a) a reference to Division 2 of Part II were a reference to section 21AV (reports to higher education providers) or 21AX (annual and other reports by the National Student Ombudsman); and
 - (b) a reference to another person or authority under section 6 or 6A were a reference to another body under section 21AH (referral of matter raised in complaints).

Application of section 37—protection from civil actions

- (12) Section 37 applies as if a reference to section 9 were a reference to section 21AZA (notice requiring information, documents or attendance to answer questions).

Subdivision C—Duties

21AZD Duty to accord procedural fairness

The National Student Ombudsman must comply with the rules of procedural fairness when exercising a power under this Act.

Example 1: If the National Student Ombudsman sets out a critical opinion of a person in a report under section 21AV (reports to higher education providers), that person must be given an opportunity to make submissions (see subsection 21AU(3)).

Example 2: The National Student Ombudsman must accord procedural fairness to a person if the National Student Ombudsman sets out a critical opinion of the person:

- (a) in disclosing information, or making a statement, under subsection 35A(1) (disclosure of information by Ombudsman); or
- (b) in referring to an investigation in a report under section 21AX (annual and other reports by the National Student Ombudsman).

Division 7—Miscellaneous

21AZE Continued application of Part

Former registered higher education providers

- (1) Subsection (2) applies if:
 - (a) an entity took action at a particular time; and
 - (b) at that time, the entity was a higher education provider; and
 - (c) at a later time (the **deregistration time**), the entity ceased to be:
 - (i) registered under Part 3 of the TEQSA Act; or
 - (ii) listed on the National Register of Higher Education Providers under paragraph 198(1)(a) of the TEQSA Act; and
 - (d) the National Student Ombudsman receives a complaint under this Part about the action before the deregistration time or within 12 months after the deregistration time; and
 - (e) the entity is a constitutional provider.
- (2) This Part applies, in relation to the complaint, as if the constitutional provider continued to be a higher education provider.

Successor and merged higher education providers

- (3) Subsection (4) applies if:
 - (a) an entity (the **first entity**) took an action at a particular time; and
 - (b) at that time, the first entity was a higher education provider; and
 - (c) at a later time (the **merger time**), the first entity ceased to exist; and

- (d) at or immediately after the merger time, another entity (the **second entity**) became the successor in title to the first entity; and
 - (e) the second entity is a higher education provider.
- (4) This Part applies as if:
- (a) the action taken by the first entity were taken by the second entity; and
 - (b) a complaint about the action made to the National Student Ombudsman against the first entity were a complaint made against the second entity; and
 - (c) anything done under this Part by the National Student Ombudsman before the merger time in relation to the action and the first entity were done in relation to the second entity.

21AZF Discretion to deal with complaints as National Student Ombudsman or other Ombudsman

Discretion to deal with complaints as National Student Ombudsman

- (1) The person who holds the office of Commonwealth Ombudsman, Overseas Students Ombudsman and VET Student Loans Ombudsman may deal with, or continue to deal with, a complaint made to one of those offices as if the complaint were made to the National Student Ombudsman under this Part if the person considers that it would be more appropriate:
- (a) to deal with the complaint in the person's capacity as the National Student Ombudsman; or
 - (b) to continue to deal with the complaint in the person's capacity as the National Student Ombudsman.

Example: A complaint made to the Commonwealth Ombudsman about a prescribed authority that is also a higher education provider could be dealt with by the National Student Ombudsman under this Part.

Discretion to deal with complaints as Commonwealth Ombudsman, Overseas Students Ombudsman or VET Student Loans Ombudsman

- (2) The person who holds the office of National Student Ombudsman may deal with, or continue to deal with, a complaint made to the

National Student Ombudsman as if the complaint were made to the Commonwealth Ombudsman, the Overseas Students Ombudsman or the VET Student Loans Ombudsman if the person considers that it would be more appropriate:

- (a) to deal with the complaint in the person's capacity as the holder of that other office; or
- (b) to continue to deal with the complaint in the person's capacity as the holder of that other office.

Example: A complaint made by an overseas student to the National Student Ombudsman about a private registered provider (within the meaning of Part IIC) that is also a higher education provider could be dealt with by the Overseas Students Ombudsman under that Part.

21AZG Authorised disclosure of information

Disclosure to TEQSA

- (1) An official may, subject to subsection (5), disclose relevant information to the Chief Executive Officer of TEQSA if the disclosure is for the purposes of assisting TEQSA to perform its functions or duties or exercise its powers.

Disclosure to Ministers

- (2) An official may, subject to subsection (5), disclose relevant information to the Minister administering this Act, or the Higher Education Minister, for the purposes of assisting in the performance of the functions or duties or the exercise of the powers of that Minister.

Disclosure to Higher Education Department

- (3) An official may, subject to subsection (5), disclose relevant information to the Secretary of the Higher Education Department if the disclosure is for the purposes of assisting the Higher Education Department to perform its functions or duties or exercise its powers.

Disclosure to prescribed body

- (4) An official may, subject to subsection (5), disclose relevant information to a prescribed body (within the meaning of

subsection 21AE(5)) if the disclosure is for the purposes of assisting the body to perform its functions or duties or exercise its powers.

Identifying information

- (5) An official is not authorised under subsection (1), (2), (3) or (4) to disclose relevant information that would enable an individual who has made a complaint under this Part to be identified, unless the individual has consented to the disclosure.

Definitions

- (6) In this section:

official means the following:

- (a) the National Student Ombudsman;
- (b) a Deputy Ombudsman;
- (c) a person who is a member of the staff referred to in subsection 31(1);
- (d) a person, not being a person referred to in paragraph (b) or (c), who:
 - (i) the National Student Ombudsman has delegated any of the National Student Ombudsman's powers under section 34; or
 - (ii) is an authorized person.

relevant information means information of the kind described in subsection 35(2).

21AZH National Student Ombudsman may notify of misconduct

The National Student Ombudsman may, at any time, bring evidence to the notice of the higher education principal executive officer of a higher education provider if, in the opinion of the National Student Ombudsman:

- (a) the evidence suggests that a higher education officer of the provider has engaged in misconduct; and
- (b) the evidence is, in all the circumstances, of sufficient force to justify the National Student Ombudsman doing so.

21AZJ Limitation on liability where information or documents provided in good faith

- (1) A person is neither liable to a proceeding, nor subject to a liability, under an enactment merely because the person, in good faith and in relation to the National Student Ombudsman's functions or powers:
 - (a) gives information to the National Student Ombudsman (other than in accordance with a notice given under section 21AZA); or
 - (b) gives a document or other record to the National Student Ombudsman (other than in accordance with a notice given under section 21AZA).

Note: For information given and documents or records produced in accordance with a notice given under section 21AZA, see subsection 21AZA(5) and section 21AZB.

- (2) To avoid doubt, subsection (1) does not prevent the person from being liable to a proceeding, or being subject to a liability, for conduct of the person that is revealed by the information, document or record given to the National Student Ombudsman.
- (3) This section does not limit section 37.

21AZK Part not to affect operation of other provisions of this Act

This Part does not, by implication, affect the operation of other provisions in this Act.

21AZL National Student Ombudsman Rules

- (1) The Minister may, by legislative instrument, make rules prescribing matters:
 - (a) required or permitted by this Part to be prescribed by the rules; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Part.
- (2) To avoid doubt, the rules may not do the following:
 - (a) create an offence or civil penalty;
 - (b) provide powers of:

- (i) arrest or detention; or
 - (ii) entry, search or seizure;
 - (c) impose a tax;
 - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
 - (e) directly amend the text of this Act.
- (3) Rules that are inconsistent with the regulations have no effect to the extent of the inconsistency, but rules are taken to be consistent with the regulations to the extent that the rules are capable of operating concurrently with the regulations.

6 At the end of Division 2 of Part III

Add:

31A Engagement of persons to conduct alternative dispute resolution processes

- (1) The Ombudsman may, on behalf of the Commonwealth, engage a person to conduct a kind of alternative dispute resolution process under Subdivision D of Division 3 of Part IIF.
- (2) The Ombudsman must not engage a person under subsection (1) unless the Ombudsman is satisfied, having regard to the person's qualifications and experience, that the person is a suitable person to conduct the relevant kind of dispute resolution process.
- (3) Persons are to be engaged on the terms and conditions that the Ombudsman determines in writing.

7 After subsection 34(3)

Insert:

- (4) The National Student Ombudsman may, either generally or as otherwise provided by the instrument of delegation, by instrument in writing, delegate all or any of the National Student Ombudsman's functions or powers under this Act (other than those under sections 21AV, 21AW and 21AX) to a member of staff referred to in subsection 31(1).

- (4A) Before delegating under subsection (4) a power or function to a member of staff referred to in subsection 31(1), the National Student Ombudsman must have regard to:
- (a) if the power or function is to be delegated to a person holding, occupying, or performing the duties of, a specified office or position—whether the office or position is sufficiently senior for the person to exercise the power or perform the function; or
 - (b) otherwise—whether the person has appropriate qualifications or expertise to exercise the power or perform the function.

8 At the end of subsection 35(1)

Add:

; or (g) a person engaged by the Ombudsman under section 31A.

9 After subsection 35(3B)

Insert:

- (3C) Subsection (2) does not prevent an officer from divulging or communicating information if doing so in accordance with an authorisation under section 21AZG.

Part 2—Other amendments

National Anti-Corruption Commission Act 2022

10 Paragraph 15(a)

Omit “and the VET Student Loans Ombudsman”, substitute “, the VET Student Loans Ombudsman and the National Student Ombudsman”.

Ombudsman Act 1976

11 After section 35C

Insert:

35D Protection from reprisals—what constitutes taking a reprisal

- (1) A person (the *first person*) *takes a reprisal* against another person (the *second person*) if:
- (a) the first person engages in conduct that:
 - (i) results in detriment to the second person; or
 - (ii) consists of, or results in, a threat to cause detriment to the second person; and
 - (b) when the conduct is engaged in, the first person believes or suspects that the second person:
 - (i) has made a complaint to the National Student Ombudsman or the Overseas Students Ombudsman under this Act; or
 - (ii) may have made a complaint to the National Student Ombudsman or the Overseas Students Ombudsman under this Act; or
 - (iii) proposes to make a complaint to the National Student Ombudsman or the Overseas Students Ombudsman under this Act; or
 - (iv) could make a complaint to the National Student Ombudsman or the Overseas Students Ombudsman under this Act; and
 - (c) the belief or suspicion is the reason, or part of the reason, for engaging in the conduct.

- (2) Despite subsection (1), a person does not *take a reprisal* against another person to the extent that the person takes administrative action that is reasonable to protect the other person from detriment.

35E Protection from reprisals—compensation and other orders etc.

Compensation

- (1) If the Federal Court or Federal Circuit and Family Court of Australia (Division 2) is satisfied, on the application of a person (the *applicant*), that another person (the *respondent*) took or is taking a reprisal against the applicant, the Court may:
- (a) in any case—make an order requiring the respondent to compensate the applicant for loss, damage or injury as a result of the reprisal; or
 - (b) if the Court is satisfied that the respondent took or is taking the reprisal against the applicant in connection with the respondent’s position as an employee of a private registered provider (within the meaning of Part IIC) or a higher education provider:
 - (i) make an order requiring the respondent’s employer to compensate the applicant for loss, damage or injury as a result of the reprisal; or
 - (ii) make an order requiring the respondent and the respondent’s employer jointly to compensate the applicant for loss, damage or injury as a result of the reprisal; or
 - (iii) make an order requiring the respondent to compensate the applicant for a part of loss, damage or injury as a result of the reprisal, and make another order requiring the respondent’s employer to compensate the applicant for a part of loss, damage or injury as a result of the detrimental conduct.
- (2) The Court must not make an order under paragraph (1)(b) if the respondent’s employer establishes that it took reasonable precautions, and exercised due diligence, to avoid the reprisal.
- (3) If the Court makes an order under subparagraph (1)(b)(ii), the respondent and the respondent’s employer are jointly and severally liable to pay the compensation concerned.
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Injunctions, apologies and other orders

- (4) If the Federal Court or Federal Circuit and Family Court of Australia (Division 2) is satisfied, on the application of a person (the **applicant**), that another person (the **respondent**) took or is taking a reprisal against the applicant, the Court may make any or all of the following orders:
- (a) an order granting an injunction, on such terms as the Court thinks appropriate:
 - (i) restraining the respondent from taking the reprisal; or
 - (ii) if the reprisal involves refusing or failing to do something—requiring the respondent to do that thing;
 - (b) an order requiring the respondent to apologise to the applicant for taking the reprisal;
 - (c) any other order the Court thinks is appropriate.
- (5) If the Federal Court or Federal Circuit and Family Court of Australia (Division 2) has power under subsection (4) to grant an injunction restraining a person from engaging in particular conduct, or requiring a person to do anything, the Court may make any other orders (including granting an injunction) that it thinks appropriate against any other person who has:
- (a) aided, abetted, counselled or procured the conduct against the applicant; or
 - (b) induced the conduct against the applicant, whether through threats or promises or otherwise; or
 - (c) been in any way (directly or indirectly) knowingly concerned in or a party to the conduct against the applicant; or
 - (d) conspired with others to effect the conduct against the applicant.

Multiple orders

- (6) The Federal Court or Federal Circuit and Family Court of Australia (Division 2) may make orders under subsections (1) and (4) in respect of the same conduct.

Burden of proof

- (7) In proceedings where a person (the **applicant**) seeks an order under this section in relation to another person (the **respondent**):
-

- (a) the applicant bears the onus of adducing or pointing to evidence that suggests a reasonable possibility of the matters mentioned in paragraph 35D(1)(a); and
- (b) if that onus is discharged—the respondent bears the onus of proving that the claim is not made out.

Costs only if proceedings instituted vexatiously etc.

- (8) In proceedings (including an appeal) in a court in relation to a matter arising under this section, the applicant for an order under this section must not be ordered by the court to pay costs incurred by another party to the proceedings, except in accordance with subsection (9).
- (9) The applicant may be ordered to pay the costs only if:
 - (a) the court is satisfied that the applicant instituted the proceedings vexatiously or without reasonable cause; or
 - (b) the court is satisfied that the applicant’s unreasonable act or omission caused the other party to incur the costs.

Interaction between remedies and criminal offences

- (10) To avoid doubt, a person may bring proceedings under this section in relation to the taking of a reprisal even if a prosecution for an offence against section 35F in relation to the reprisal has not been brought, or cannot be brought.

35F Protection from reprisals—offence

Taking a reprisal by causing detriment

- (1) A person (the **first person**) commits an offence in relation to another person (the **second person**) if:
 - (a) the first person engages in conduct; and
 - (b) engaging in the conduct results in detriment to the second person; and
 - (c) when the conduct is engaged in, the first person believes or suspects that the second person:
 - (i) has made a complaint to the National Student Ombudsman or the Overseas Students Ombudsman under this Act; or

- (ii) may have made a complaint to the National Student Ombudsman or the Overseas Students Ombudsman under this Act; or
- (iii) proposes to make a complaint to the National Student Ombudsman or the Overseas Students Ombudsman under this Act; or
- (iv) could make a complaint to the National Student Ombudsman or the Overseas Students Ombudsman under this Act; and
- (d) the belief or suspicion is the reason, or part of the reason, for engaging in the conduct.

Penalty: Imprisonment for 6 months.

Taking a reprisal by threat to cause detriment

- (2) A person (the **first person**) commits an offence in relation to another person (the **second person**) if:
- (a) the first person engages in conduct; and
 - (b) engaging in the conduct consists of, or results in, a threat to cause detriment to the second person; and
 - (c) the first person is reckless as to whether the second person fears that the threat would be carried out; and
 - (d) when the conduct is engaged in, the first person believes or suspects that the second person:
 - (i) has made a complaint to the National Student Ombudsman or the Overseas Students Ombudsman under this Act; or
 - (ii) may have made a complaint to the National Student Ombudsman or the Overseas Students Ombudsman under this Act; or
 - (iii) proposes to make a complaint to the National Student Ombudsman or the Overseas Students Ombudsman under this Act; or
 - (iv) could make a complaint to the National Student Ombudsman or the Overseas Students Ombudsman under this Act; and
 - (e) the belief or suspicion is the reason, or part of the reason, for engaging in the conduct.

Penalty: Imprisonment for 6 months.

- (3) Subsection (2) applies whether or not the threat mentioned in paragraph (2)(b) is:
- (a) express or implied; or
 - (b) conditional or unconditional.

Exception—reasonable administrative action

- (4) Subsections (1) and (2) do not apply if the conduct engaged in by the first person is administrative action that is reasonable to protect the second person from detriment.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

No requirement to prove matters related to a complaint

- (5) In a prosecution for an offence against this section, it is not necessary to prove that the second person:
- (a) has made a complaint to the National Student Ombudsman or the Overseas Students Ombudsman under this Act; or
 - (b) may have made a complaint to the National Student Ombudsman or the Overseas Students Ombudsman under this Act; or
 - (c) proposes to make a complaint to the National Student Ombudsman or the Overseas Students Ombudsman under this Act; or
 - (d) could make a complaint to the National Student Ombudsman or the Overseas Students Ombudsman under this Act.

Note 1: The offences against subsections (1) and (2) relate to whether the first person has taken a reprisal (within the meaning of section 35D) against another person.

Note 2: The offence against subsection (1) relates to a reprisal that consists of causing detriment to another person. The offence against subsection (2) relates to a reprisal that involves a threat to cause detriment to another person.

Note 3: Proof of intention, knowledge or recklessness will satisfy a fault element of recklessness (see subsection 5.4(4) of the *Criminal Code*).

Privacy Act 1988

12 Subsection 50(1) (after paragraph (d) of the definition of *alternative complaint body*)

Insert:

(da) the National Student Ombudsman; or

13 After subparagraphs 50(2)(a)(iv) and (3)(a)(iv)

Insert:

(ivaa) to the National Student Ombudsman under the
Ombudsman Act 1976; or

Tertiary Education Quality and Standards Agency Act 2011

14 After section 194

Insert:

194A Disclosing information to National Student Ombudsman

TEQSA may disclose higher education information and personal information to the National Student Ombudsman if the disclosure is for the purposes of assisting the National Student Ombudsman to perform its functions or duties or exercise its powers.

Part 3—Application and transitional provisions

15 Application of amendments

National Student Ombudsman

- (1) Part IIF of the *Ombudsman Act 1976*, as inserted by Part 1 of this Schedule, applies in relation to action taken by a higher education provider, whether the action is taken before, on or after the commencement of this item.

Protection from reprisals

- (2) Sections 35D, 35E and 35F of the *Ombudsman Act 1976*, as inserted by Part 2 of this Schedule, apply in relation to conduct engaged in on or after the commencement of this item.

Information sharing

- (3) The amendments of section 35 of the *Ombudsman Act 1976* made by Part 1 of this Schedule apply in relation to making a record of, divulging or communicating information on or after the commencement of this item, whether the information is acquired before, on or after that commencement.
- (4) Section 194A of the *Tertiary Education Quality and Standards Agency Act 2011*, as inserted by Part 2 of this Schedule, applies in relation to the disclosure of information occurring on or after the commencement of this item, whether the information is obtained before, on or after that commencement.

16 Transitional—annual reports of National Student Ombudsman

The first annual report under subsection 21AX(1) of the *Ombudsman Act 1976*, as inserted by Part 1 of this Schedule, relating to the operations of the National Student Ombudsman during a financial year must relate to the operations of the National Student Ombudsman during the period:

- (a) beginning on the day this item commences; and
- (b) ending on the first 30 June that occurs after that commencement.

Part 4—Contingent amendments

Ombudsman Act 1976

17 Subsection 21AZC(11)

Omit “subsections 35B(2) and 35C(2)”, substitute “subsection 35C(2)”.

18 Paragraph 21AZC(11)(b)

Omit “or 6A”.

*[Minister’s second reading speech made in—
House of Representatives on 11 September 2024
Senate on 10 October 2024]*

(110/24)
