

January 2024

Submission to the Commonwealth Department of Education's Consultation on a National Student Ombudsman

Australia's most connected university

Charles Darwin University's vision is to be Australia's most connected university by being courageous and making a difference in the Northern Territory (NT), Australia and beyond.

Charles Darwin University (CDU) is a dual sector university with around 7,500 higher education and 3,000 vocational full time equivalent students. Engaging a large number of part-time and mature age students, CDU's higher education cohort is almost 13,000 students by headcount.

Being a dual sector university allows CDU to meet the education needs of Territorians. At the heart of CDU is to engage First Nations students and support their attainment of vocational and higher education. Around seven per cent of higher education and 25 per cent of vocational education students are First Nations students, and CDU has the highest proportion of remote students in higher education in Australia.

CDU has established itself as an exciting and progressive research-intensive university with a regional focus. CDU's research outputs consistently outperform for its size and are evaluated as being well above world standards in areas of importance to Northern Australia.

In line with the Consultation Questions provided by the Commonwealth Department of Education, this submission focuses predominantly on the how a National Student Ombudsman (NSO) could better support students of CDU. This submission has been informed by internal consultation focused on the existing complaints mechanisms available to students and how future arrangements could be implemented.

1. A proposed National Student Ombudsman is described in Action One of the Action Plan on Addressing Gender-based Violence in Higher Education.

Are there additional considerations that would be critical to the role of a National Student Ombudsman?

CDU does not lose sight of the context for the NSO consultation, which has arisen from the *Draft Action Plan: Addressing gender-based violence in higher education* (Draft Action Plan). The National Student Safety Survey 2022 provided important insights for the university sector. The statistics reveal that universities have a strong role to play in national efforts to reduce gender-based violence.

Relevant to this Consultation, the National Student Safety Survey 2022 showed that CDU students are more likely to make a formal complaint than the national average (4.2 per cent of students, compared to the average of 3 per cent); and CDU students were more likely to seek support (21.4 per cent of students, compared to the average of 16.8 per cent).

Upon making a complaint, students at CDU are encouraged, if appropriate, to attempt a local resolution. Then if not satisfied, or it is inappropriate to seek local resolution, students have access to a complaint and then an appeals mechanism. CDU sees this as a three-step process and the complaints team are agents of the of the process, not decision-makers. Complaints made by students may include decisions of the University, or actions of peers or University staff.

The escalation beyond internal processes is to the Ombudsman NT, with an average of 13 complaints escalated (or made independently) to the Ombudsman NT over the preceding four years.¹ Students can also access other fora, including the NT Anti-Discrimination Commission and the Australian Human Rights Commission.

As part of student experience, the availability of complaint handling mechanisms, and willingness to access support, must remain core business for universities. An additional consideration recommended by CDU is that the NSO have an educative role to encourage strong internal complaints processes and not inadvertently provide opportunity for universities to weaken (or collapse) their complaint structures. An NSO direction that complainants must first seek to resolve matters locally at the University-level would support universities to maintain and possibly strengthen internal processes.

A further additional consideration recommended by CDU is that the NSO become a source of resources and training for staff and students, especially on student safety. As a small university, CDU sees the benefit in having access to a broader range of high-quality resources and training that can be readily adapted and adopted.

Key points

1. Additional considerations recommended by CDU are that the NSO:
 - a) have an educative role to encourage strong internal complaints processes; and
 - b) become a source of resources and training for staff and students, especially on student safety.

2. If a National Student Ombudsman is developed, it is proposed to be centred on student voices and needs, and be effective, accessible, and transparent through the full complaints cycle.

How can we ensure the Ombudsman is student-centric?

CDU expects the design of student-centric approaches can be modelled on existing examples.

¹ See Ombudsman NT Annual report 2022-23, accessed at https://www.ombudsman.nt.gov.au/sites/default/files/downloads/2022-23_annual_report_omb_final.pdf

As outlined above, the CDU complaints process is one of agency, not decision-making and staff adopt a restorative approach to resolving complaints between parties. CDU notes that caution needs to be exercised in relation to complaints that relate to, or have an element of, gender-based violence. This is true in respect to the scope of criminality, but also in preserving an alleged perpetrator's right not to self-incriminate. For complainants who may be alleged victims, pathways to resolution should be made clear, including access to the criminal justice system.

Key Points

2. CDU notes that caution needs to be exercised in relation to complaints that relate to, or have an element of, gender-based violence to ensure pathways to access criminal justice are not compromised.

3. How should the Ombudsman consider the needs of different student cohorts (e.g. LGBTQIA+, international, First Nations, people living with disability and higher degree research students)?

Intersectionality appears to be well recognised in the Draft Action Plan. As for question 2., CDU expects the design of student-centric approaches that are inclusive can be modelled on existing examples.

4. Are there any other issues that should be considered in exploring the role and scope of a National Student Ombudsman?

CDU notes that the scope of the NSO is much broader than addressing gender-based violence and this replicates the broad range of matters than can be currently taken to the Ombudsman NT. The scope contemplates the exclusion of matters of academic judgement in order to preserve academic integrity of universities and CDU believes this is appropriate. As such, CDU has no concerns with the proposed scope of the NSO.

With respect to powers of the NSO, the Draft Action Plan envisages that the NSO would have limited powers to investigate; offer a restorative process; and recommend specific administrative steps to the Vice-Chancellor. CDU notes that these powers appear to be similar to the Ombudsman NT's functions under the *Ombudsman Act 2009 (NT)* ss 10-11. Whether or not the NSO will be more favourable to NT students will be an important consideration for draft legislation, should an NSO be established.

As a dual sector University, all vocational education and training *and* higher education students have access to the CDU complaints processes. CDU has argued strongly through the Universities Accord consultation process (and elsewhere) that the needs of students, especially from equity cohorts would be better served by a 'one tertiary' system. CDU recommended that the Universities Accord set an ambiguous target for a 'one tertiary' system on the 10-year horizon with an incremental approach to reducing the barriers and discrepancies between the systems.²

² See Charles Darwin University Submission to the Australian Universities Accord Discussion Paper (April 2023) available at <https://www.cdu.edu.au/government-engagement>.

The NSO, as envisaged by the Draft Action Plan further entrenches the separation of ‘vocational’ and ‘higher’ education systems in Australia. The practical implication for CDU would be that students have a different escalation pathway beyond the internal complaints process.

Broadly there are two major areas of ambiguity relating to the NSO’s scope and powers that CDU argues should be resolved. CDU would hope for further exploration of these issue before any implementation of a NSO is finalised and recommends further consultation on a draft model, should an NSO be established.

Firstly, the operability of the NSO to engage and share information with relevant regulators is not sufficiently detailed in the Draft Action Plan for CDU to properly consider. This is potentially a significant power available to the NSO and opens the possibility for much more far-reaching regulatory and compliance powers that are not being consulted on.

Secondly, the scope of the NSO contemplates a referral process between competing fora available to complainants. The Draft Action Plan does not address any detail about how these referral processes might operate; the complementarity of such arrangements or the legislative powers required for implementation. This potentially leaves open the risk of vexatious and frivolous complaint making where students can ‘jurisdiction-shop’. More importantly, is also leaves opens potential ambiguity and confusion for students, which would be most severe for those most vulnerable.

Key Points

3. CDU notes that with respect to the powers of the NSO, it appears to be similar to that of the Ombudsman NT.
4. By operating only for higher education students, the establishment of a NSO would further entrench the separation of ‘vocational’ and ‘higher’ education systems in Australia.
5. CDU recommends further consultation on a draft model, should an NSO be established, to address major areas of ambiguity, including:
 - a. the operability of engagement and sharing of information with current regulators; and
 - b. the legislative or other authority for a referral process for student complaints outlined in the Draft Action Plan.

Conclusion

If established, the NSO has the capacity to support institutions with educational and training resources which could strengthen access to complaint processes across the country and improve student agency.

While CDU has no concerns with the proposal to establish an NSO, the case for an NSO is not strongly made for students in the NT (both vocational and higher education) who can currently access the Ombudsman NT.

CDU supports further consultation on an NSO model to address major areas of ambiguity. Please feel free to contact in the first instance Charles Darwin University’s Deputy Vice-Chancellor Academic, Professor Fiona Coulson via Fiona.coulson@cdu.edu.au.