

OMBUDSMAN (NATIONAL STUDENT OMBUDSMAN) RULES 2025

EXPLANATORY STATEMENT

Issued by authority of the Attorney-General

in compliance with section 15J of the *Legislation Act 2003*

PURPOSE AND OPERATION OF THE INSTRUMENT

The *Universities Accord (National Student Ombudsman) Act 2024* (the NSO Act) amends the *Ombudsman Act 1976* (the Act) to establish the National Student Ombudsman as a new statutory function of the Commonwealth Ombudsman to deal with complaints about, and conduct investigations into, actions of higher education providers. Amendments made by the NSO Act commence on 1 February 2025.

Section 21AZL of the Act provides that the Minister may, by legislative instrument, make rules prescribing matters that are required or permitted by Part IIF of the Act (which establishes the National Student Ombudsman) to be prescribed by the rules, or necessary or convenient for carrying out or giving effect to that Part.

Section 4 of the *Acts Interpretation Act 1901* provides authority for legislative instruments, including rules like the Ombudsman (National Student Ombudsman) Rules 2025 (the Rules), to be made before the commencement of the relevant enabling legislation. Subsection 4(2) of the Acts Interpretation Act enables the Minister to make the Rules as if the enabling legislation has already commenced. Making the Rules ahead of commencement of amendments in the NSO Act facilitates the effective operation of the National Student Ombudsman from its commencement on 1 February 2025.

The purpose of the Rules is to prescribe State or Territory bodies, in accordance with section 21AE of the Act, to enable those bodies to transfer complaints to and share information with the National Student Ombudsman. Prescribing a body will also allow the National Student Ombudsman to share information with that body for the purpose of assisting with the performance of that body's functions under subsection 21AZG(4) of the Act.

Transfer of complaints and information-sharing by prescribed bodies

Subsection 21AE(2) of the Act provides that 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 a higher education student of the provider.

Subsection 21AE(3) of the Act provides that a prescribed body is authorised to disclose information or documents that relate to a complaint of the kind mentioned in subsection (2) to the National Student Ombudsman for the purpose of:

- transferring, or determining whether to transfer, the complaint to the National Student Ombudsman, or
- assisting the National Student Ombudsman to perform its function or duties or exercise its powers under Part IIF in relation to action taken by higher education providers.

Subsection 21AE(4) of the Act provides that subsections (2) and (3) have effect despite anything in another law of the Commonwealth, or a law of a State or Territory.

Subsection 21AE(5) of the Act defines a prescribed body as:

- an Ombudsman of a State (including an Ombudsman of a Territory)
- a State or Territory body prescribed by the Rules for the purposes of this definition, or
- a Commonwealth entity prescribed by the Rules for the purposes of this definition.

The ability to facilitate effective two-way transfers and information-sharing with State and Territory bodies (other than State and Territory ombudsmen) will generally require a body to be prescribed in the Rules. If a body is not prescribed in the Rules they may be unable to transfer complaints to or share information with the National Student Ombudsman, if prevented from doing so by other legislation. Prescribed bodies will nevertheless retain discretion about whether to transfer a complaint to, or share information with, the National Student Ombudsman.

The Rules prescribe a range of State and Territory bodies that can receive complaints from higher education students about their higher education provider. Prescribing these bodies will facilitate a ‘no wrong door’ policy and support warm referrals to the National Student

Ombudsman. This will assist in deconflicting any jurisdictional overlap and contribute to a trauma-informed approach to complaint handling by minimising the number of times a person is required to re-tell their story and reducing the potential for re-traumatisation.

CONSULTATION

Consultation on the development of the Rules was undertaken between October and December 2024 between the Attorney-General's Department, Department of Education and the Office of the Commonwealth Ombudsman. Consultation was also undertaken with State and Territory policy agencies through a monthly National Student Ombudsman Policy Forum to identify bodies that should be prescribed from commencement of the National Student Ombudsman. Relevant State and Territory policy agencies have nominated and agreed to the bodies being prescribed in the Rules.

Detailed consultation on implementation and operational requirements to facilitate complaints transfer and information-sharing is being conducted by the Office of the Commonwealth Ombudsman ahead of the commencement of the National Student Ombudsman on 1 February 2025. Ongoing engagement with States and Territories will occur as needed, including to ensure the Rules effectively support the operation of the National Student Ombudsman.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Ombudsman (National Student Ombudsman) Rules 2025

The Rules are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Rules

The *Universities Accord (National Student Ombudsman) Act 2024* amends the *Ombudsman Act 1976* (the Act) to establish the National Student Ombudsman as a new statutory function of the Commonwealth Ombudsman to deal with complaints about, and conduct investigations into, actions of higher education providers.

Section 21AZL of the Act provides that the Minister may, by legislative instrument, make rules prescribing matters that are required or permitted by Part IIF of the Ombudsman Act (which establishes the National Student Ombudsman) to be prescribed by the rules, or necessary or convenient for carrying out or giving effect to that Part.

Section 21AE of the Act provides for the transfer of complaints and disclosure of information to the National Student Ombudsman by prescribed bodies. Subsection 21AE(5) of the Act defines a prescribed body as an Ombudsman of a State (including an Ombudsman of a Territory), or a State or Territory body, or Commonwealth entity, prescribed by the Rules for the purposes of this definition.

The Ombudsman (National Student Ombudsman) Rules 2025 (the Rules) prescribe State and Territory bodies, in accordance with section 21AE of the Act, to enable those bodies to transfer complaints to, and share information with, the National Student Ombudsman.

Human rights implications

The Rules engage the following rights:

- the right to education in Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)
- the right to an effective remedy in Article 2(3) of the International Covenant on Civil and Political Rights (ICCPR)
- the prohibition on interference with right to privacy in Article 17 of the ICCPR.

The right to education in Article 13 of the ICESCR

Article 13 of the ICESCR recognises the important personal, societal, economic and intellectual benefits of education. Article 13 also provides that secondary education in all its different forms, including higher education, shall be made generally available and accessible to all by every appropriate means.

The National Student Ombudsman promotes the right to education by providing greater oversight of higher education providers to ensure students can fully, fairly and safely participate in higher education, and that higher education providers administer their policies equitably and fairly. The Rules promote the right to education by facilitating the effective operation of the National Student Ombudsman, through enabling the transfer of complaints

and sharing of information between the National Student Ombudsman and other bodies that can receive complaints from higher education students regarding higher education providers.

The right to an effective remedy in Article 2(3) of the ICCPR

Article 2(3) of the ICCPR provides that States shall undertake to ensure the right to an effective remedy for any violation of rights and freedoms recognised by the ICCPR. It includes the right to have a remedy determined by competent judicial, administrative or legislative authorities.

The Rules promote the right to an effective remedy by providing for complaint transfer and information sharing mechanisms that facilitate the effective operation of the National Student Ombudsman.

The prohibition on interference with right to privacy in Article 17 of the ICCPR

Article 17 of the ICCPR provides that no one shall be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence, and prohibits unlawful attacks on a person's reputation. The right to privacy includes respect for informational privacy, including in relation to storing, using and sharing private information, as well as the right to control the dissemination of personal and private information. To be permissible as a matter of international human rights law, interferences with privacy must be according to law and not arbitrary. Any limitation should be proportionate to the objectives of the limitation.

The Rules engage the right to privacy by prescribing bodies which may share information (including personal information of complainants and other parties, where relevant to a complaint) with the National Student Ombudsman. The National Student Ombudsman in turn is authorised to share information (including information received from prescribed bodies) with other bodies in limited circumstances. This includes powers to share information with other bodies for the performance of their functions and exercise of their powers and to report on investigations undertaken by the National Student Ombudsman.

Any information, once obtained by the National Student Ombudsman, will be protected by legislative and policy frameworks to which the National Student Ombudsman is subject. This includes:

- protections under the *Privacy Act 1988*
- the Protective Security Policy Framework

- requirements under section 21AH of the Act for complainant consent before the National Student Ombudsman may refer a matter raised in a complaint to another body, including prescribed bodies
- requirements under section 21AZG of the Act for complainant consent before the National Student Ombudsman discloses identifying information to a prescribed body for the purposes of assisting in the performance of the functions or duties of that body
- additional restrictions on disclosure (under section 35 of the Act) which provide an offence for improper disclosure of information obtained in the course of duties and functions under the Ombudsman Act.

The National Student Ombudsman's powers to receive, seek, use and further disclose information are directed to the legitimate objective of ensuring complaints by higher education students can be effectively dealt with and independently investigated by the National Student Ombudsman. These powers are subject to a range of safeguards to ensure they are only exercised in furtherance of this objective. To the extent the provisions in the Rules may limit the right to privacy, this is a permissible limitation. The provisions are reasonable and necessary to ensure the National Student Ombudsman has access to the information needed to perform its oversight role effectively and are directed to the legitimate objective of ensuring complaints can be dealt with effectively and sensitively to facilitate robust oversight of higher education providers.

Conclusion

The Rules are compatible with human rights because they support the effective operation of the National Student Ombudsman. To the extent that the Rules may also limit human rights those limitations are reasonable, necessary and proportionate.

NOTES ON SECTIONS

PART 1 – Preliminary

Section 1 – Name

This section provides that the title of the instrument is the *Ombudsman (National Student Ombudsman) Rules 2025* (the Rules).

Section 2 – Commencement

This section provides for the Rules to commence at the same time as the *Universities Accord (National Student Ombudsman) Act 2024*. Section 4 of the Acts Interpretation Act provides authority for legislative instruments, including these Rules, to be made before the commencement of the relevant enabling legislation. This will ensure that prescribed bodies are able to transfer complaints to and share information with the National Student Ombudsman from its commencement on 1 February 2025.

Section 3 – Authority

This section provides that the Rules are made under section 21 AZL of the *Ombudsman Act 1976*.

Section 4 – Definitions

This section defines the term **Act** to mean the *Ombudsman Act 1976*.

The note provides that the following terms are defined in the Ombudsman Act and have the same meaning for the purposes of the Rules:

- prescribed body
- State or Territory body.

PART 2 – Prescribed bodies

Section 5 – State or Territory bodies prescribed for the purposes of section 21AE of the Act

Section 21AE of the Ombudsman Act provides for the transfer of complaints and disclosure of information to the National Student Ombudsman by prescribed bodies. Subsection 21AE(5) of the Act provides that *prescribed body* means:

- an Ombudsman of a State (paragraph 21AE(5)(a))
- a State or Territory body prescribed by the National Student Ombudsman Rules for the purposes of paragraph 21AE(5)(b), or
- a Commonwealth entity prescribed by the National Student Ombudsman Rules for the purposes of paragraph 21AE(5)(c).

Under section 21AE, prescribed bodies 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 a higher education student of the provider. They may also disclose information or documents that relate to a complaint to the National Student Ombudsman for the purpose of transferring, or determining whether to transfer, the complaint to the National Student Ombudsman or assisting the National Student Ombudsman to perform its function or duties, or exercise its powers, under Part IIF of the Ombudsman Act. Prescribing a body will also allow the National Student Ombudsman to share information with that body for the purpose of assisting with the performance of that body's functions.

Section 5 provides that the following State and Territory bodies are prescribed for the purposes of paragraph 21AE(5)(b):

- ACT Integrity Commission
- Anti-Discrimination Commissioner, Tasmania
- Anti-Discrimination Board, New South Wales
- Commissioner for Equal Opportunity, South Australia
- Crime and Corruption Commission, Queensland
- Human Rights Commission, Australian Capital Territory
- Independent Broad-based Anti-corruption Commission, Victoria
- Independent Commission Against Corruption, New South Wales

- Independent Commission Against Corruption, South Australia
- Information Commissioner, New South Wales
- Integrity Commission, Tasmania
- Office for Public Integrity, South Australia
- Privacy Commissioner, New South Wales
- Public Sector Commission, Western Australia
- Queensland Human Rights Commission
- South Australian Skills Commission
- Victorian Equal Opportunity and Human Rights Commission.