Consultation on a National Student Ombudsman in response to the Budget 2024-25

University of Melbourne Student Union (UMSU) Advocacy Service Submission

31 May 2024

To: The Hon. Jason Clare, MP
Minister for Education

From: Advocacy Service
University of Melbourne Student Union

1. EXECUTIVE SUMMARY

This is a targeted submission setting out the rationale for and benefits of thorough consultation on the establishment of the National Student Ombudsman with the UMSU Advocacy Service and other independent student advocacy services located at tertiary institutions around the country.

This submission also outlines trends at the University of Melbourne where students have experienced a lack of accountability and responsiveness in areas of student safety and welfare. In some cases, students have also faced poor administrative and academic decision-making which has resulted in distressing and long-lasting impacts on their lives.

Through our networks with other student advocacy services nationally, we understand that these outcomes for students are not unique to this institution.

There are few external agencies with jurisdiction to review decision-making at tertiary institutions, leaving universities in the enviable position of self-regulating their processes. Not only is this poor administrative decision-making, but it creates a lack of transparency, making it difficult to dispute deciosions. External review of tertiary decisions is currently inaccessible for most, with the scope of the Ombudsman Victoria being too narrow and procedural, leaving the courts as the only avenue of redress. Legal proceedings are both financially out of reach for most students, and a stressful and burdensome process few can manage.

From our experience assisting and representing students with concerns about the University, this has contributed to a decreasing level of trust among the student population about the possibility of having their complaints addressed fairly and effectively, perpetuating negative perceptions among students that their voices and experiences do not matter.

2. WHO WE ARE

The UMSU Advocacy Service is a department of the University of Melbourne Student Union (UMSU) which is an incorporated association and recognised by the University of Melbourne as the representative body for all students.

The Service is funded via the Student Services and Amenities Fee (SSAF) disbursed by the University in accordance with its statutory obligations under the *Higher Education Support Act* 2003 (HESA). HESA provides that where an institution levies the SSAF, its students must be given access to independent advocacy officers who provide services in relation to matters arising under the education provider's academic and procedural rules. The governance of UMSU is wholly independent from the University and the staff of the Advocacy Service must act in the interests of students.

The Service is comprised of professional staff with backgrounds in law and social work who have extensive experience in the tertiary sector, with expertise in policy and university governance frameworks. Our staff profile includes a Divisional Manager, a Team Leader, four Senior Advocates, an Advocate and an Assessment and Triage Coordinator.

In 2023 the Advocacy Service assisted almost 1500 students. Over 20% of these matters involved complaints about university decision-making in respect of Special Consideration – that is accommodation of the impacts of extenuating circumstances on students' assessment tasks and results. Disputes about assessment, and complaints about determinations in relation to remission of fees were also highly represented. International and domestic students sought assistance in almost equal numbers, with slightly more international students seeking help, and the split between graduate and undergraduate students was approximately 40% to 60% respectively.

Notably, of these students there were six who elected to take their complaint to the Ombudsman Victoria – just 0.4%. Compared to the number of students who remained aggrieved by the outcome of their complaint, this small figure suggests the current parliamentary ombudsman is not meeting the need for independent review of university decision-making.

3. THE IMPORTANCE OF CONSULTATION

The UMSU Advocacy Service welcomes the establishment of a National Student Ombudsman. We are foremost concerned that the terms of reference or jurisdiction of the new National Student Ombudsman will effectively fill the significant void in options for external review of university decision-making.

Our extensive case work practice reveals many incidents where students have been frustrated by the lack of accountability and responsiveness by the University of Melbourne in the areas of student safety and welfare, remission of fees in special circumstances, reasonable adjustments, and the failure to uphold the principles of natural justice when reviewing decisions that have a significant impact on student progression and wellbeing.

The Service's dedication to individual advocacy and the depth and breadth of our casework experience places us well to contribute to the establishment and development of the National Student Ombudsman. Our knowledge is based on tens of thousands of hours of casework in student matters.

In the Final Report of the Australia Universities Accord, we noted that the Review Panel held several reference groups and roundtables, to which many stakeholders were invited in order to make presentations. The Report notes that the Panel also held countless meetings with universities, tertiary peak bodies and other providers, and that students and student groups

were invited to make submissions to the Panel. We were pleased to note that the National Union of Students and a number of student lobby groups external to tertiary providers were invited to contribute to this process.

However, we understand that there were many independent advocacy services attached to tertiary providers which have not had an opportunity to share their insight. We believe the knowledge and evidence base supported by casework trends is crucial to the development of a robust and effective national Student Ombudsman.

4. CURRENT OPTIONS FOR INDEPENDENT REVIEW

The University Visitor once had a role in the final review of university administrative decision-making, but at the University of Melbourne, that role is now held by the Governor of Victoria and according to the *University of Melbourne Act*,[1] the Visitor

> *has ceremonial functions only; and … has no powers, duties or functions with respect to the resolution of disputes or any other matter concerning the affairs of the University, other than a matter involving the exercise of ceremonial functions only.*[2]

Just under 20 years ago, two academic staff at the University of Technology in Sydney undertook research on the potential need for a National University Grievance Handler.[3] In their research they found that there had been a significant rise in the number of grievances being brought to external review and the explanation for this increase from similar research suggested that there were several drivers for this:

- The introduction and growth of fee-paying students resulting in the expectation of a 'fee for service' or consumer culture transforming universities, the implication being that students who pay are more ready and willing to complain.
- Deregulation increasing the potential for maladministration.
- An increase in student numbers with a dramatic increase in the proportion of international students, suggesting that institutions do not cater as well as they might to the needs of this cohort.
- Lack of university attention to developing and implementing acceptable complaints policy and procedures.

Notwithstanding that this research is now almost two decades old, our experience in the Advocacy Service supports their findings and indicate that in the intervening time, things have only worsened. In addition to these drivers, we have observed an unwillingness by University management to properly resource these areas in charge of policy implementation, leaving overworked and poorly trained staff to make

[1] *University of Melbourne Act 2009* (Vic).
[2] Ibid, at s.22.
[3] Bronwyn Olliffe & Anita Stuhmcke, 'A National University Grievance Handler? Transporting the UK Office of the Independent Adjudicator for Higher Education (OIA) to Australia' (2007) 29 *Journal of Higher Education Policy and Management*, 203.

decisions with administrative expediency being the prime motivating factor.

Moreover, we broadly concur with the conclusions of this study that it is desirable that there be a national ombudsman and that the introduction of such an office would likely have a similar impact to the introduction of the Office of the Independent Adjudicator (OIA)in the UK:

> *In the UK, the introduction of the OIA has required individual institutions to reconsider their complaint resolution processes—this outcome alone is a desirable attribute to import into Australian universities.*[4]

We note that since its establishment in 2005, the OIA has developed significant resources in collaboration with Advocacy Services in Student Unions, and we hope this model will be influential to the development of the Australian National Student Ombudsman.

4.1. OMBUDSMAN VICTORIA (OV)

The Victorian Parliamentary ombudsman has scope to investigate complaints about universities in Victoria, to the extent that it involves administrative action, and can investigate the merits of a given decision provided it discloses the possibility that a decision was 'contrary to law', 'unreasonable, unjust, oppressive or improperly discriminatory' or simply 'wrong'. However, in practice we have found the OV investigators will often speak to the university and upon hearing their explanation, decline to investigate further, despite ample evidence that the account provided is not wholly (or even partly) accurate. Importantly, despite its significant powers, the OV can enforce neither its decisions nor its recommendations for administrative change. In practice we have seen this result in recommendations to the University being partially, or insufficiently implemented, or in some cases a cynical sham exercise which purports to address the wrong, but only repeats the same poor practice. This is illustrated in a case study at 5.4.2.

Additionally, it's difficult to ascertain how effective the OV is at resolving complaints escalated beyond the university's internal processes. Apart from a few case studies featured in their annual reports, there is no specific reporting on the types of complaints addressed by the OV each year.

Given the relative lack of transparency in the OV's reporting, we can only look at our own data for some indication of how many students are accessing the OV for external review of university decisions.

The Advocacy service has limited resources and is not always able to assist students to escalate complaints beyond internal university processes. However, every year there are a number of cases present which have been

[4] Ibid, p 213.

so poorly handled by the University that the Service elects to assist students to request the OV investigate their complaint.

Interestingly, but perhaps unsurprisingly, the number of matters where students elected to progress their complaint to the OV peaked during COVID when the University in lockdown significantly and rapidly changed the delivery modes of their course offerings. This resulted in a spike of cases where student complaints about subject quality were either dismissed without investigation or resulted in a self-review of the complaint by the faculty about which the complaint had been made. This is further detailed under 5.4.2 below.

Year	Ombudsman Victoria Assistance
2014	8
2015	2
2016	3
2017	5
2018	5
2019	6
2020	13
2021	21
2022	8
2023	6

Table 1: Students seeking assistance for complaints to the Ombudsman Victoria 20214 - 2023

4.2. ADMINISTRATIVE APPEALS TRIBUNAL

Reviews of certain decisions under legislation may ultimately remain outside of the National Student Ombudsman's remit, however it would be helpful if there was an intermediate step between internal university review and a tribunal such as the Administrative Appeals Tribunal (AAT). The AAT, while a tribunal at which applicants can be unrepresented, is generally not accessible for students.

A recent case illustrates this point in the tribunal's own words

> *The Applicant has endured significant hardship and it is a credit to him that he has nonetheless pursued and completed his Bachelor of Media Arts. The manner in which he presented his case before the Tribunal, as a self-represented litigant, is also a credit to him. The process can be daunting. The Tribunal's decision is based upon the sufficiency of evidence presented at the hearing and is not an adverse finding in regards the credibility of the Applicant.*

4.3. HUMAN RIGHTS COMMISSIONS AND TRIBUNALS

All Australian education providers are thoroughly covered by anti-discrimination and equal opportunity legislation, both Federal and State.[5]

[5] For e.g. the University of Melbourne is covered by the *Disability Discrimination Act 1992* (Cth), the *Sex Discrimination Act 1984* (Cth), the *Racial Discrimination Act 1975* (Cth), the *Age Discrimination Act 2004* (Cth), and the *Equal Opportunity Act 1995* (Vic).

Additionally, universities must comply with the *Commonwealth Disability Standards for Education 2005* (Cth). On that basis, it is reasonable to expect that students with genuine claims of unlawful discrimination would make good use of this jurisdiction. However, that does not seem to be the case according to several pieces of research.

In her survey of litigation involving Australian Universities between 1985 and 2006, published in 2008,[6] Hilary Astor found that unlawful discrimination complaints amounted to almost half of the cases brought by students in that period.[7] However, few of those cases actually involved unlawful discrimination, rather they involved

> *students aggrieved about what they perceived to be unfair treatment or decision-making by a university. These students tried to make their complaints fit within discrimination legislation but failed.*[8]

Similarly, research in 2009 found that

> *from reading the reports of these actions, that an allegation of discrimination in most cases thinly disguises student dissatisfaction with grades, academic progress, suspension of enrolment or postgraduate candidature, or a failure to be offered a place on a university course. Many of these battles have a long history before they are heard in an external tribunal. In many cases the students have exhausted internal procedures and are still aggrieved.* [9]

It seems uncontroversial that we view this as evidence of a lack of accessible independent review for students who remain aggrieved at university decision-making, complaints with no place to go spill out into other jurisdictions where they are doomed to fail.

4.4. CIVIL LITIGATION

> *The question of how, where and to whom students may challenge university decisions is a vexed one.*[10]

Most universities in Australia are public bodies, subject to various legal frameworks and jurisdictions. While judicial scrutiny of university decisions has provided some guidance for improving internal processes, according to legal scholars researching the avenues for university students to challenge university decisions, the case law clearly evidences that a system involving

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[6] Hilary Astor, 'Australian Universities in Court: The Causes, Costs and Consequences of Increasing Litigation' (2008) *Legal Studies Research Paper No. 08/133*.
[7] Ibid, 16.
[8] Ibid.
[9] Sally Varnham & Patty Kamvounias, 'Unfair, Unlawful, or just Unhappy? Issues Surrounding Complaints of Discrimination Made by Students Against their Universities in Australia' (2009) 14 *International Journal of Law & Education* 5, 6.
[10] Patty Kamvounias and Sally Varnham, 'Legal Challenges to University Decisions Affecting Students in Australian Courts and Tribunals' (2010) 34 *Melbourne University Law Review* 140, 141.

multiple courts and tribunals is not suitable for effectively resolving student disputes.

For a decade and a half, there have been increasing complaints flooding university internal processes, and trickling into the few external review jurisdictions accessible to students. For students who have chosen to litigate, despite the cost and length of proceedings, the case law evidences that jurisdictional limitations pose often insurmountable challenges to successful outcomes.

As discussed above, the Ombudsman Victoria has a limited scope, and no real 'teeth' to enforce its determinations. Accordingly, we hope the establishment of the new National Student Ombudsman will fill the void to be a site of robust independent review of university decision-making affecting the rights and interests of students.

5. AREAS OF FOCUS

> *Students [are] litigating about the fairness of university decision-making. Further these students appear to be struggling to find appropriate legal remedies for independent review of university decisions.*[11]

Given the limitations in scope and enforcement powers of the Parliamentary Ombudsman, and the barriers to other forms of independent review of the University's decision-making, the Advocacy Service believes the following areas should be considered as priority areas for the new National Ombudsman. We have provided some case studies to illustrate the current shortfalls and limitations.

5.1. STUDENT SAFETY AND WELFARE

There have been instances where the University has failed to provide a safe learning environment to students due to a lack of understanding regarding its obligations to victim-survivors.

For example, at the beginning of a new academic year, a small and tight knit cohort of students were invited to a meeting that was notionally aimed at discussing the year ahead, goals to set, and so on. However, upon arrival, it was soon apparent that the true purpose of the meeting was to notify the cohort of the return from suspension of a student who had been a perpetrator of sexual harassment and misconduct.

Many of the students' significant reported stress and anxiety, and the faculty received multiple complaints from concerned students. Unfortunately, the Faculty response did not help the affected students to feel safe to engage with their studies in a supportive environment, and after escalation to the Academic Registrar, the University's response was that it could not act without receiving further, new complaints.

[11] Above, n 6, 18.

The apparent inability of the University to understand or engage with student safety concerns conflicted jarringly with theories of trauma-informed care that highlight the need for safety first before healing can begin.

For students who were victim/survivors of sexual assault and harassment these poor responses led to a sense of institutional-betrayal and exposed them to re-traumatisation.

In this situation, a Student Ombudsman could have intervened at the very early stages and advised the faculty on how to manage the situation in a properly trauma-informed manner.

5.2. SPECIAL CIRCUMSTANCES – ACADEMIC CONSIDERATION AND REMISSION OF FEES

There are many occasions where students experience hardship during a teaching period which directly impacts their academic performance, but do not have the capacity or wherewithal to seek advice and support at the time. Often, when the dust settles and the student feels they have some time and space to consider the impacts of that difficult time, they understandably want to explore their options for addressing the disadvantage they suffered.

In recent times, the department that assesses special consideration applications changed their practice – without any change to policy - with regard to applications for special consideration that are lodged after the release of results for the semester in question. Current practice now is to direct these applications to the Fees Team as fee remission in special circumstances applications. We are of the view that this approach is in breach of the *Assessment and Results Policy* and may also constitute an error at law.

An application for fee remission must be assessed against criteria set by federal legislation, and if an application is rejected, students only have one avenue of appeal (internal to the Fees Team Manager). Applications for special consideration, on the other hand, can be escalated under the complaints and grievances policies all the way to the Academic Board, providing students a more involved and robust escalation process where their matter is likely to be heard. Therefore, we advise students to apply for special consideration first. In tandem with this advice, we are forced to warn students that the University will likely try to redirect them to an application for fee remission.

We have had numerous discussions with the relevant University department to try and reach some common ground on this matter, but to no avail.

A ruling or recommendation from the Student Ombudsman would be invaluable for seeking resolutions to situations such as this and reminding the University of following proper administrative processes.

In respect of applications for the remission of fees, we have observed multiple instances in which students who applied for Fee Remission were deemed ineligible due to an extremely narrow application of the criteria without reasonable consideration of their individual circumstances. There have also been cases of victim-survivors being denied fee remission due to not meeting the rigid timeframes imposed by the University. This is concerning, as the University has the authority to waive such criteria for fee remission, and their unwillingness to do so reflects a wider issue. The University has an obligation to provide a safe community for students on campus and through their policies and processes. In the cases referred to above, there was an assumption that asking victim-survivors to detail the traumatic events that impacted their study was nothing more than an administrative task which they should have had the capacity to complete within the stipulated timeframe. This response from the University demonstrates an organization-wide lack of trauma-informed practice and does not align with Action Plan Addressing Gender-based Violence in Higher Education action items one and two.

In the above instances, the Advocacy Service and Sexual Harm Response Coordinators (SHRC) worked with other departments in the University to advocate for the students' applications to be reconsidered. This required Advocacy and SHRC staff to explain the impact of trauma on victim-survivors, and why the term "administrative task" did not take into consideration the impact that reliving traumatic events has on the individual. If there had been an organization-wide understanding of trauma informed practice, this would not have been necessary.

The implementation of a Student Ombudsman would have provided victim-survivors with an alternative pathway to dispute their original fee remission outcomes. Additionally, this measure may have supported countless other students in similar positions who accepted the University's decisions instead of seeking further support through our Service. The Student Ombudsman could also have played an integral role in identifying patterns of students reporting unfair treatment by the University, and in preventing further instances through recommendations for changes to administrative processes.

5.3. REASONABLE EQUITABLE ADJUSTMENTS

There have been many instances where decisions regarding reasonable adjustments have failed to follow the guidelines set out in the *Commonwealth Disability Standards for Education 2005* (Cth). Students have reported that the difficulty of discussing these issues with the University or reaching an outcome which meets the need created by their disability has detracted them from focussing on their studies, creating an added burden and a cycle of being left further behind compared to their peers.

The Standards recommends that education providers consult with students about reasonable adjustments which the University has failed to do on many occasions, resulting in ill-fitting adjustments, which then continue to create unfavourable outcomes for the student. We have witnessed the University justify its decisions by either citing its obligation to only provide reasonable requests and its requirement to meet the integrity of the course. We, of course, support and encourage reasonable adjustments and/or decisions that protect the integrity of a course. However, these requirements should not be used to justify University decision-making that favours administrative expediency.

Students who are neuro-diverse have reported experiencing the burden of having to educate University decision-makers on how their disabilities affect their access to education.

A student who had begun the process of seeking reasonable adjustments with disability services presented to the Service seeking assistance as the relationship with the University had broken down. The reason for this is that disability services found the student eligible for reasonable adjustments and would then refer the student to the faculty. The faculty would then refer the student back to disability services unable to meet these reasonable adjustments due to staff resourcing issues. We assisted the student in escalating the matter to the Academic Register by demonstrating that the adjustments were reasonable as they had been met by a previous University of similar size and standing and that these adjustments would not interfere with the integrity of the course. The Academic Registrar rejected the formal grievance on the grounds that the adjustments were now deemed to be creating an unfair advantage for the student.

We assisted the student by then appealing the decision the Academic Board appeals committee who found in favour of the student. Because these adjustments were handled poorly by the faculty, the student was then forced to appeal the decision again. The student reported that this process had a significant impact on their mental health and their ability to focus on their honours thesis which created an adverse learning environment for them.

In a similar vein, an international student studying their PhD visited the Service requiring substantial assistance in escalating their matter with the University on several fronts. The student suffered from seizures, required the use of a mobility scooter to access the campus and student accommodation and was accompanied by an assistance dog. The student had difficulty in organising suitable adjustments with the faculty and university accommodation. Escalating their matter within the University system took some time and no resolution was found. The student reported an increase in their seizures due to the stress they experienced dealing with the process. Because of this, their ability to progress their doctoral research faltered and they were issued with a show cause notice regarding their lack of progress which also affected their scholarship entitlements.

These instances would have benefitted from the review of a National Student Ombudsman who could properly inform the University of their obligations under the Standards and ensure that students would not endlessly wait for outdated outcomes which would then impact on their ability to complete the course.

5.4. DECISION-MAKING

5.4.1. UNTIMELY RESPONSES

University processes such as the formal complaints and grievances process and appeals process allow students to contest a decision made by the University that they do not agree with, such as suspension, termination of enrolment, or the outcome of a Special Consideration application. The outcome of these can greatly influence the enrolment of a student, and therefore it is imperative that they receive timely outcomes, so they may manage their enrolment accordingly. Unfortunately, we are noticing a remarkably long response times, which are negatively impacting students, as evidenced in the examples below.

Our service was contacted by a student in January 2024, after they received a notice of termination of their enrolment. The window to appeal this decision was 20 university days, and we advised the student to seek clarification regarding whether their enrolment would remain intact until the appeals process had been exhausted. The University does not specify within the Student Appeals Policy a timeframe in which students can expect an outcome of their appeal, however, it is stated that they will receive an outcome “as soon as reasonably practicable”. Therefore, believing their matter would be resolved within a reasonable time, the student maintained their enrolment while awaiting the outcome of their appeal. However, as the census date approached, they became anxious that their appeal would be dismissed, leaving them liable for their fees if they failed to withdraw before the census deadline. This anxiety was heightened as they were an international student, facing significantly higher fees compared to domestic students. Despite their concerns, the student remained enrolled. As of June 2024, they are yet to receive a decision on their appeal. In the meantime, they have completed all assignments and exams for the semester. With no resolution to their appeal and uncertainty about their status at the University, they are unsure whether to enrol in Semester 2 or if their Semester 1 grades will be recognized.

Although the Student Appeals Policy does not stipulate a specific turnaround time for outcomes, as discussed above, the Student Complaints and Grievances Policy advises students that they should receive an outcome within 15 University days. However, our service has noticed a consistent pattern of students experiencing wait times far exceeding this. For instance, one student initially enrolled in a Bachelor of Science and Doctor of Physiotherapy package with a Commonwealth Supported Place (CSP). They sought advice from the University regarding changing their bachelor’s degree while maintaining their place in the

Doctor of Physiotherapy with a CSP. The University advised that this was possible, and the student made the change to their enrolment. However, when they received their offer for the Doctor of Physiotherapy program, it was for a Full Fee Paying (FFP) place, not the expected CSP. The rationale provided by the University for this was that the student had made an amendment to their enrolment, and therefore was no longer eligible for a CSP. Consequently, the student lodged a formal complaint to uphold the original offer of a CSP in the Doctor of Physiotherapy program. They stated that they had made the change to their enrolment based on the advice of the University, which assured them that it would not affect their CSP. This complaint was lodged at the beginning of 2024. Despite numerous follow-ups by the student and advocacy efforts on their behalf, an outcome was not received for the first semester of 2024 when they were due to start. Consequently, the student postponed their course to await their outcome.

However, as of June 2024, they have yet to receive a decision, further delaying their enrolment for the second semester of 2024. Thus, their pursuit of the Doctor of Physiotherapy degree has been postponed by a full year due to awaiting the university's decision.

5.4.2. FAILURE TO PRACTICE PRINCIPLES OF NATURAL JUSTICE

The principles of natural justice should be at the centre of any institution making administrative decisions that have life-altering impacts on students' work and life choices.

We have found many instances where staff are not properly trained in these principles nor understand the rationale for them. This has resulted in unjust outcomes that further injure a student's study or work prospects well beyond the original issue that propelled the student to seek redress. We have provided two examples of this below.

In the last twelve months, a student appealed a decision to terminate their enrolment for unsatisfactory progress, and received an email from the Student Appeals team notifying them that an appeal hearing was to be scheduled and to await further information (indicating that their appeal had been assessed as meeting grounds to proceed to a hearing).

However, in the following weeks, the student received contradictory correspondence from the Academic Secretary informing them that their appeal was dismissed without a hearing.

In part, the outcome stated that the student had not demonstrated any grounds for the appeal to proceed to a hearing.

The appeal had initially been deemed to contain sufficient merit to proceed to a hearing, and it should have been the case that the faculty response to the appeal would be considered by the Appeal Panel in the hearing and not the Academic Secretary.

We raised this with the University Secretary, who verified the process that had taken place explaining that the appeal was going to be heard until the Academic Secretary received further advice from the faculty.

The student took their case to Ombudsman Victoria, who shared our concerns about the procedural irregularity and made a recommendation to the University that they grant the student a hearing.

The University followed this recommendation and gave the student a hearing, but the concerns around procedural fairness and natural justice were only exacerbated when the Appeal Panel and the Faculty representative argued that the student's enrolment should be terminated on a completely different basis to the original decision.

With a Student Ombudsman in place, earlier intervention would be possible in a case such as this, and a student's right to a fair and impartial hearing could be upheld.

In another case example, a student in the final semester of their bachelor degree was found to have breached academic integrity rules due to the falsification of medical documents, and their penalty under the Academic Board Regulation was a recommendation to the Vice-Chancellor that they be expelled from the University, and a recommendation to University Council that their award be revoked (their award had been conferred before the misconduct allegation had been investigated).

In this situation, the VC must either accept the committee's recommendation and expel the student or refer the matter back to the committee with a recommendation that it reconsider the penalty imposed. Either way, the VC must act, and whatever the final decision, the student has a right to appeal to the Academic Board.

In this particular instance, the student heard nothing for months, and on our advice, they contacted the Academic Secretary's office to seek clarification, explaining that they had never received the decision from the VC. The reply simply stated that the University was still proceeding through the steps required to revoke the student's award, and that the academic misconduct proceedings had concluded – the fact that they had never received a final decision from the VC and never had the chance to appeal the findings was overlooked.

We advised the student that the University failed to recognise that it had not followed its own procedures correctly, specifically in relation to Part 9 Section 45(4) of the Academic Board Regulation, which states:

> *"In the case of a recommendation made under 45 (1) (j), the faculty must allow 20 working days for the student to appeal to the Board before sending the recommendation to revoke the award to the University Secretary for Council's consideration."*

Eventually the student felt compelled to engage external legal assistance, and this action finally prompted the University to act by way of the VC

referring the matter back to the Faculty Misconduct Committee for reconsideration. The result was for the recommendation of expulsion to be rescinded, allowing the student to re-enrol in their final two subjects to complete their degree.

With a Student Ombudsman in place, the University could have been directed to take this action without the need for the student to engage legal assistance.

5.4.3. DISPROPORTIONATE OUTCOMES

Finally, we have noted a lack of consistency and proportionate outcomes that pepper University decision-making.

Our Service has observed a notable discrepancy in the responses to misconduct allegations. For instance, recently a 68-year-old female ESL student sought our advice after receiving a general misconduct allegation for using inappropriate language in class. This student was advised that while the complaint was investigated, their access to campus was revoked with immediate effect, as the University deemed them to be a threat to the safety or wellbeing of any visitor or member of the University community.

Following the completion of the investigation, the student received a notice five months later that the matter had been referred to the University's Student Discipline Committee (SDC) for consideration and determination in accordance with the *Student Conduct Policy* (MPF1324). A hearing was held by the SDC, and the outcome given a month later. The student was permitted to return to campus with conditions.

While we recognize the importance of addressing general misconduct to maintain a safe learning environment, we considered this particular outcome to be disproportionately severe compared to other cases. Moreover, similarly to the cases mentioned in section 5.4, there was a significant delay in providing a timely response to this student's situation. The University denied this student access to campus for five months causing the student to suffer immense distress that led to severe negative mental health outcomes.

In this instance, the implementation of a Student Ombudsman would have afforded the student an additional mechanism to escalate their matter. While our service has supported the student in their response to the University's decision, we have encountered challenges due to disparities in responses to misconduct across faculties and prolonged wait times for appeals.

6. CONCLUSION

The UMSU Advocacy Service welcomes the opportunities a National Student Ombudsman will provide to students who are currently experiencing poor decision-making outcomes by universities across Australia.

We believe that intense consultation with the advocacy services embedded in tertiary institutions will provide the National Student Ombudsman an acute understanding of the failures of university decision-making and the very real and significant impact these are having on student lives.

We hope a National Student Ombudsman will also have powers to direct universities to change policy where it does not meet the principles of natural justice and fails to deliver transparent, responsive, and timely outcomes.

We recommend that the National Student Ombudsman is given a similar scope to the UK Office of the Independent Adjudicator whose reach includes covers student complaints, academic appeals, academic and non-academic disciplinary matters, fitness to practice, fitness to study, bullying and harassment and breaches of codes of conduct and other regulations.

We hope this response and the case studies contained therein provide the Minister with an understanding of why engaging the advocacy services attached to education providers across the nation is necessary and how the depth and breadth of our experience can inform the establishment of the National Student Ombudsman.