



National Higher Education Code to Prevent and Respond to Gender-based Violence

Response template

The Department is seeking your feedback on the National Higher Education Code to Prevent and Respond to Gender-based Violence (the National Code).

The Department has released an [Issues Paper](#) to inform your feedback. We would like your views on the proposed standards and requirements, whether any additional standards need to be considered, how to ensure the National Code aligns with education regulations and broader regulatory frameworks, and additional guidance materials needed to support providers' implementation.

You can provide your feedback through the [online form](#) or by completing this template and emailing your feedback to nationalgbv.code@education.gov.au. An [Issues Paper](#) has been released to inform your feedback. Responses will take approximately 30-40 minutes to complete.

If the topics in the survey raise any concerns for you, you can access support and advice about domestic, family and sexual violence through 1800RESPECT (1800 737 732) or visit the [1800RESPECT website](#). This is a free, confidential service available 24/7.

Please note that any information provided about a higher education provider does not constitute a formal complaint and the Department is unable to take any action. If you would like to make a formal complaint you can contact your higher education provider, or you may be able to lodge your complaint with a body such as the Australian Human Rights Commission, the Fair Work Ombudsman, your state's ombudsman, human rights commission or workplace health and safety regulator or the Overseas Students Ombudsman.

More information on formal complaint options for students is available on the Study Assist [Higher Education Student complaints](#) webpage.

Responses close at 11.59pm AEST on Friday 28 June 2024.

Questions, with responses from the University of Sydney

1. For the purposes of defining gender-based violence in the context of the National Code and as part of associated compliance activities, what are key considerations for the Department?

The University of Sydney supports the principles and aspirations that underpin the proposed National Higher Education Code to Prevent and Respond to Gender-based Violence. However, as universities are required to prevent and respond to all forms of violence (including sexual assault and sexual harassment of straight cisgender men), there needs to be sufficient flexibility in the use of definitions and in reporting requirements to allow institutions to use umbrella terms like 'sexual misconduct' in local policies and procedures. It should be for individual institutions to identify, respond to and report on matters falling within the scope of defined terms.

2. How can the Department ensure the alignment of the National Code with other education regulations (e.g. Threshold Standards, ESOS National Code) and broader regulatory frameworks (e.g. privacy laws, positive duty)?

- To ensure alignment and to facilitate institutional compliance and consistency in reporting, the National Code (or accompanying guidelines) should include cross-references and in-text links to other education regulations and reporting requirements relevant to each Standard.
- The Department may wish to consider broadening Standard 2 (Student engagement before enrolment) and Standard 6 (Student support services) of the ESOS National Code to ensure consistent messaging about provider requirements to avoid repeated Requests for Information (RFI) by regulatory authorities.



3. Do the potential Standards cover all aspects of a 'whole-of-organisation' approach and what is necessary to protect and promote the safety of students and staff? Are there other standards to include? Please detail what they are, and why.

- Within proposed Standard 4, mandatory institution-wide training and education for student-facing staff (Unit of Study Coordinators, HDR Supervisors etc.) to be able to identify indicators, respond appropriately and refer survivors, perpetrators and others to appropriate institutional or community services, agencies and bodies.
- Inclusion or acknowledgement within Standards that student representative association and student body events (i.e. SRC, Unions and societies) are high-risk occasions/ environments. They should be bound by the Standards and the National Code.

4. What additional requirements should be included for each Standard? Please detail for each Standard and why.

No additional requirements.



5. How should standards account for providers' size, student and staff profile and location/s (including regional, metropolitan and Australian and international campuses)?

- The Standards should be sufficiently flexible to allow for the adoption of local policies and practices that best meet the needs of individual institutions and their communities. With large or multi-campus/transnational providers, it is not always possible to facilitate “in-person” support structures. Victim-survivors may prefer online modes of communication rather than face-to-face.
- Reporting requirements should recognise the need to balance confidentiality and privacy requirements, particularly where reported numbers are relatively small and could lead to the identification of individual cases or self-identification by victim-survivors and perpetrators.
- Conclusions should not be drawn from, and compliance decisions should not be based on small amounts of data.
- The Standards should expressly recognise that universities have no direct control or influence over independent residential accommodation providers with autonomous governing bodies, including residential colleges established under State legislation.

6. Recognising student accommodation settings are high-risk environments, are there additional considerations for these providers under the National Code?

- Standards should indicate or direct institutions to ensure policies and procedures encompass high-risk or influencing factors, such as:
 - Alcohol (service of alcohol and consumption of) and other substances and party policies
 - Sexual health and relationships, including Consent-focused training for student leaders and whole cohort
 - Student/staff codes of conduct
 - Security and surveillance, etc.
- Targeted and evidence-based interventions for men/male-identified people, and/or those at increased risk of perpetrating gender-based violence.



7. Beyond the National Code, what additional resources and materials would be required by providers to support implementation and ongoing compliance?

- Guidance notes and/or fact sheets would facilitate understanding of and compliance with the Standards. As noted above, these should include cross-references and in-text links to other education regulations and reporting requirements relevant to each Standard.
- In addition to guidance material, the Department should conduct relevant information and Q&A sessions as they do for various Standards under the ESOS National Code.
- They should also clearly explain how the Department/Government will monitor and assess providers' compliance with the Standards; how breaches will be identified and managed; how and when institutions will have a right to respond to alleged breaches and supporting information/documentation; how the outcome of Departmental investigations will be notified; and provider appeal mechanisms.
- A toolkit of an evidence-based and nationally endorsed set of preventative education initiatives and programs to ensure consistency across the nation which includes minimum standards of programs.
- Targeted and evidence-based prevention and intervention programs for men/male-identified people, and/or those at increased risk of perpetrating gender-based violence.

8. What else needs to be considered in the Department's approach to regulating the National Code?

- The Department should clarify its intersections with regulators such as WHS, AHRC, State and Territory Ombudsmen and Anti-Discrimination bodies.
- The Department should recognise that the power of public universities to establish targets for achieving gender balance and diversity in their governing bodies is limited by the terms of their governing legislation.
- Except in very limited circumstances, privacy legislation prohibits providers from sharing information about known perpetrators with other institutions, particularly if they operate in a different State or Territory. This severely limits the ability of providers to alert new or prospective employers to past instances of gender-based violence.
- It is unrealistic to expect disciplinary processes to be completed within one month of commencement. Due to their seriousness and the gravity of the consequences for both parties, sexual misconduct investigations are highly detailed and complex, and outcomes are usually the subject of internal and external appeals. Parties often seek legal advice and universities are bound to comply with review mechanisms prescribed in enterprise agreements and student discipline policies.
- Whilst ideal, this timeframe does not take into account circumstances surrounding participant and witness illness/exams, availability of support people including legal practitioners, or the inability to attend investigation meetings with procedural fairness requirements in mind. Additionally, NSW Police may prohibit the process from commencing or continuing until their matters have been finalised.
- What mechanisms will be in place for providers to appeal/challenge decisions made by the Department and/or the National Student Ombudsman? The operating detail and principles surrounding the National Student Ombudsman remain unclear.
- Please consider aligning any regulatory reporting requirements with each institution's registration with TEQSA. We already have similar and repeated reporting requirements under our CRICOS registration. Having a third response to similar or expanded requirements under a separate delegated piece of legislation increases the regulatory burden for providers.

9. How often should the National Code be reviewed and updated?

Every five years with sector consultations included in every review process.

10. What are examples of good practice that can be drawn on to inform the design and implementation of the National Code?

From our January 2024 submission/feedback:

- Safer Communities Advisory Group
- In-person consent workshops for student leaders and first year students, with the project co-designed with students and utilising a peer facilitation model
- Student leadership co-design training program
- Higher Degree by Research (HDR) Supervisors Respectful Relationships training

