



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.

Feedback from Australian Catholic University (ACU)

Questions

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 proposed definition of gender-based violence, as presented in the Issues Paper for the purposes of the National Code, needs greater clarity. Currently, it is open-ended and higher education providers will find it difficult to operationalise it. The definition needs clear parameters. For example, it is unclear whether general bullying, harassment, or perceived discrimination would fall within the definition of gender-based violence.

Clarity could also be achieved by using less ambiguous language, and supporting the definition with examples and case studies to illustrate the kinds of cases that would fall within the definition, as well as examples that would fall outside of the definition. Greater clarity on “non-physical violence” and what constitutes “harm” is also necessary. “Harm” could be defined in accordance with Australian criminal law.

Furthermore, consideration needs to be given to how the definition and National Code would interact with matters relating to freedom of speech and academic freedom. That is, providers need clear guidance on the parameters of what constitutes gender-based violence and how the National Code is interpreted especially in situations where there might be competing concerns; for example, where speech or certain ideas might be considered to constitute gender-based violence. To illustrate, guidance is sought on whether the following two scenarios, as examples, would, or would not, fall within the definition of gender-based violence:

Example 1 (Freedom of Speech): Student A is a Social Work student at a university. During class, the students were discussing working with people who have experienced family and domestic violence. The lecturer’s language on the PowerPoint slides was gendered to say ‘she/her’, which the lecturer justified by identifying evidence that more women than men experience family and domestic violence. Student A questioned whether men could be victims too. Several other students in the class took offence at this comment and raised a complaint with the University and demanded the student be removed from the degree on the grounds that they did not believe Student A was suitable to being a Social Worker and would be a risk to vulnerable people they may work with. Student A has strong religious views and was also reported on a couple of occasions for not acknowledging another student’s preferred pronouns.

Example 2 (Harm): Student B has a complex domestic and family violence history, mental health illness, and disability. In class, a lecturer facilitates a class discussion on a topic that was triggering to Student B, and Student B considers that the situation was handled insensitively. Under the proposed code, it is possible that the student perceives this to be gender-based violence. However, an investigation finds that gender was only one small element of a very complicated set of circumstances.

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)?

Fundamentally, the Federal Government needs to work on a more consolidated approach to higher education regulation. The Department of Education should use a single regulatory mechanism to influence the sector.

The existing standard in the *Higher Education Standards Framework (Threshold Standards) 2021* and associated Guidance Note on Wellbeing and Safety could 'house' the National Code. It should also be noted that universities are already subject to a number of action plans related to student and staff safety and wellbeing. The Support for Students Policy requirement may add a level of complication if not adequately incorporated with the National Code, which would run counter to both instruments' policy objectives.

The Department also needs to ensure the National Code is cognisant of, complimentary to, and not in conflict with other educational and broader regulatory requirements which cover adjacent, or potentially overlapping, policy areas. For example, gender-based violence would also be considered a psychosocial hazard under work, health and safety (WHS) legislation, with the attendant regulatory and compliance regimes, but could also be covered under the Positive Duty to prevent sex discrimination under Sex Discrimination legislation. Safe Work Australia has also recently released a model code of practice, *Sexual and Gender-based Harassment: Code of Practice*, which covers similar material to the proposed National Code.

An audit of existing regulations and the new National Code should be conducted by the Department to identify any gaps, and to map out any potential conflicts between the National Code and other education regulations and frameworks. This is vital work, to ensure the smooth introduction and effective implementation of the National Code. It is also suggested that there be no link to the *Education Services for Overseas Students Act 2000* (Cth) and accompanying [National Code](#), which have been developed specifically for international students.

Furthermore, there should be unified definitions and terminology between existing regulations and the National Code. Provisions within the National Code framework must also be specific and easy to operationalise, and not vague and open to different interpretations. Examples and case studies should be used to illustrate best practice to higher education providers.

With respect to regulation, a more risk-based approach to development, or enhancement of supporting mechanisms, would facilitate better compliance and monitoring, and better outcomes for victim-survivors. Evidently the National Code will add to an already complex and dense regulatory and policy environment at a time when universities are operating in an increasingly constrained funding environment. Universities are subject to increasingly more onerous compliance activity when consideration is given to the full gamut of regulation providers are required to monitor. There are also potentially conflicting priorities imposed on the sector and increasing demands placed on governance bodies. For example, in the latest TEQSA Request for Information on Artificial Intelligence, it is indicated that this is a priority and the necessary resources must be applied with governance oversight. A significant amount of resourcing over an extended period of time will be required to ensure underlying processes and practices are able to be developed to a point where governance bodies can sufficiently assure themselves of compliance.

The Department should carefully, and holistically, consider the mechanisms through which regulatory compliance is operationalised. Requiring providers to report to multiple bodies on matters related to higher education legislative frameworks (particularly given the close alignment

of the National Code to pre-existing legislation) could result in misaligned implementation and monitoring, and un-intentional provider non-compliance.

Adopting a staged approach to implementation with agreed timelines, preferably via a provider implementation plan, would ensure all providers are able to either build additional resourcing or transition existing resourcing within their operating envelope. Given the current financial state of providers, an unplanned rapid implementation would not be in the interests of students or providers.

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.

ACU agrees that a whole-of-organisation approach is necessary to protect and promote the safety of students and staff. However, further consideration needs to be given to how the proposal to “conduct annual performance reviews of the whole-of-organisation approach and publish these reviews in the form of a standalone report” will be given practical effect. Specific guidance is needed on implementation. For instance, currently at ACU we do not survey or gain feedback from students regarding sexual misconduct for privacy and confidentiality reasons, and the University relies on the results of the National Student Safety Survey (NSSS). However, the NSSS is not conducted annually.

There are two brief references in the Issues Paper to “teaching and learning” but there is no clarity around what a whole-of-organisation approach would look like in relation to teaching and learning activity. If the National Code will incorporate a standard that requires gender-based violence to be addressed as part of academic curriculum this should be clearly articulated. If it is intended that gender-based violence should be addressed as part of teaching and learning (i.e., academic curriculum), this would be a major undertaking for most higher education providers. Therefore, it is vital that the National Code is clear on requirements, and to ensure consistency across the sector.

A standard related to the preservation of academic freedom and freedom of speech, along with matters of religious belief or conscience could also be incorporated into the National Code to make it truly inclusive. A safeguard in the National Code to guard against vexatious or activist abuses of the code/ombudsmen might also be prudent. Such a mechanism, combined with a legal definition of “harm” (for example, the *Criminal Code Act 1995* (Cth) defines harm as physical or mental, with harm to a person’s mental health being more than ordinary emotional reactions) will aid the implementation of the National Code.

Other issues to consider include to perhaps give consideration to whether the needs of individual under 18 years of age should be specifically addressed. Clarification also needs to be provided on whether Homestay providers would be included within the definition of “other accommodation providers”. Finally, with respect to provisions on trauma-informed, safety-first procedures, clarification is sought on whether this would entail culturally and linguistically diverse students having free access to translating and interpreting services as part of the trauma-informed approach.

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

The following guidance and materials should accompany each Standard:

- Example templates, case studies and resources that can be utilised and amended by universities, rather than individual universities having to create their own resources. This would support consistency in messaging across universities, and help streamline assistance and support.
- Clear objectives and requirements for achieving compliance for each standard, to minimise misinterpretation and confusion. For example, within the “Accountable governance and leadership” standard, more information on what the annual key performance indicators will be and the specific regulations for university executive and the governing body is needed. Information is also needed on how accountability will be monitored and measured for leadership.
- Guidance for providers on how to provide protection for students and staff who are making a formal report of an incident, including on best practice to prioritise their safety and identity. When conducting safety planning for student victims-survivors there can be privacy issues; for example, in accessing an alleged student perpetrator’s university timetable. There should be guidance in the National Code on how these situations should be addressed – for instance using the above example, should safety planning take priority over an alleged perpetrator’s right to privacy in respect of their timetable? This will increase clarity for university staff who have responsibilities in these areas.
- For the standard “Trauma-informed, safety-first procedures”:
 - In a situation where there is an investigated and substantiated report of gender-based violence by a staff member who no longer works with the university, the National Code should provide clarity on what action a provider could take; for example, issue a formal letter of notification or put a flag in the provider’s employment database in case the former staff member seeks to be re-employed.
 - Specific guidance on how providers can play their part in behaviour change for perpetrators, recognising that many perpetrators will not voluntarily enrol into behaviour change programs. This might also entail identifying suitable behaviour-change programs for perpetrators as these services are not always readily available and accessible.
- For the standard “Effective organisational policies and practice”: Evidently, as indicated, policies need to be easy to understand. Avoiding legal terminology and overly clinical language will support the full comprehension of these policies for all. However, provision of examples on how this policy could be written to support accessibility for all (e.g., for young people, First Nations communities, and people with disabilities) would aid providers.
- For the standard “Evidence-based education and training”: There could provision for providing training to certain third-party contractors with a student facing role on campuses; for example, university café staff who are not employees of the university. This could be part of contractual arrangements with universities. There could also be a requirement that security staff contracted to providers have an elevated level of trauma-informed practice training.

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

The National Code should be sufficiently flexible for providers to effectively implement it with regard to their particular profiles and missions, which vary from institution to institution. Guidelines and examples of best practice to support implementation of the National Code should also be scalable, acknowledging the different sizes of providers and their resource capacity and by providing examples of best practice at each level. This should encompass giving consideration to the resources and capacities of smaller providers, and/or providers that have smaller campuses and staff numbers in some settings.

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

For universities that have arrangements with external student accommodation providers, currently there is no mechanism that compels those providers to share their data with the university. While the Department intends to address this by 2026, the National Code should provide guidance on how to manage this situation in the interim. Additionally, the National Code may contradict parts of the Residential Tenancies Act in terms of moving or evicting student residents. Some university-owned and operated properties enjoy an exemption from the Act whilst others need to operate within it.

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

The following additional material would support implementation of the National Code and ongoing compliance:

- Detailed guidelines providing practical examples of implementation would be helpful to providers and have been beneficial in other spheres.
- Compliance checklists to aid implementation.
- Templates for surveys/questionnaires for evaluating the effectiveness of prevention initiatives.
- Materials such as fact sheets to share with various groups within the university (or other higher education provider) to help them understand how the National Code can be implemented within their scope of practice. For example, tailored resources for human resources, academics, legal, the general community etc.
- Examples of high standard monitoring and evaluation techniques and resources targeted to the university cohort, especially around prevention strategies.

Government should provide additional funding to enable providers to deliver on the requirements of the new National Code (examples of additional resourcing requirements are provided below). Providers will have to invest additional time and resources to ensure compliance and deliver on substantial monitoring and reporting obligations. As such, the Department should be mindful that the National Code imposes obligations on providers that are going to be very costly to meet. Without additional funding, supports for students in other areas will inevitably have to be cut back as there is a finite amount of funding available to providers.

Consideration should be given to provider circumstances (including number of students, amount and geographic spread of campuses, student profile (regional, low-SES, disability etc.)) in determining the level of need for additional resourcing and where it should be targeted. Careful consideration should also be given to the role of Student Services and Amenities Fee (SSAF) funding in resourcing activity to support student safety and wellbeing, particularly with respect to how student associations and providers can combine efforts to support this activity.

Activities that will require additional funding.

The requirements of the National Code are far-reaching. Implementation of the National Code as well as ensuring ongoing compliance and reporting will require many providers to employ additional staff and/or resources at a time when many are facing financial shortfalls and staff cutbacks. For example:

- Some providers use external independent investigators to investigate formal reports of gender-based violence, and therefore these costs are likely to increase once the Code is implemented.
- Raising the visibility of gender-based violence is likely to result in an increase in disclosures, which will require additional staff resourcing to ensure incidents are appropriately addressed and victims are properly supported.
- The creation of modules, videos, case studies and/or campaigns to assist promotion and awareness in support of the National Code will require additional staff.
- The production of pamphlets, brochures, and other educational material, to assist in raising awareness around gender-based violence and where and how to report incidents, will require additional resources.
- Training for academic staff around prevention and response is also vital, however, this requires additional funding as it is very costly to provide ongoing mandatory training for thousands of staff on an ongoing, iterative basis.

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

The Department should prioritise the development of guidance notes to support the introduction of the National Code. Providers need clarity on compliance requirements and particularly around how the National Code aligns with, or expands on, other elements of the regulatory framework.

Fundamentally, regulation of the National Code needs to be guided by the same regulatory principles as TEQSA – reflecting risk, regulatory necessity, and proportionality. Adherence to these principles will ensure providers are not over-burdened by obligations that are not reflective of, or take into account, provider circumstances and the maturity of their self-assurance mechanisms.

Any duplication of providers' compliance and regulatory reporting requirements to regulators and/or government should also be minimised to avoid the wastage of limited resources. Imposing more reporting requirements and additional administrative burden on providers will mean providers will have less time and resources to focus on important operational matters, to successfully implement change.

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

Reviewing the National Code every 2-3 years may be an appropriate interval for periodic reviews and/or updates, as this would provide a reasonable period of time for the code to be operationalised and for any issues to be identified between reviews. Consideration should also be given to reviewing the National Code in line with the National Student Safety Survey to ensure consistency, transparency, and comparison across providers.

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

In the WHS realm, implementation of the *Model Code of Practice: Managing Psychosocial Hazards at Work* is an example of good practice in an adjacent sphere, with the Code enabled by model legislation and now progressively supported by practice guides from regulators.

Design and implementation of the National Code could take a similar approach to the Australian Human Rights Commission *National Principles for Child Safe Organisations*. The National Principles outline the individual principles then break it down into key action areas and indicators of how organisations can uphold these actions. The simple, effective and easy to interpret actions eliminate any misinterpretation or ambiguity around compliance.

Consideration could perhaps also be given to developing a similar approach to Universities Australia's *Primary Prevention of Sexual Harm in the University Sector: Good Practice Guide* (July 2023) to provide universities with a best practice guideline of initiatives that are already being undertaken within the sector and an opportunity to share ideas, learnings, and insights.