

# UA response to the consultation on the draft Action Plan addressing gender-based violence in higher education

## Introduction

Universities Australia, as the peak body for Australia's 39 universities, appreciates the opportunity to respond to the consultation on the Australian government's draft Action Plan addressing gender-based violence in higher education, including the introduction of a National Student Ombudsman.

Australian universities are deeply committed to actively addressing gender-based violence on campus and working in collaboration with others to combat this societal scourge. A comprehensive approach to addressing gender-based violence needs to incorporate primary prevention,<sup>1</sup> which requires ongoing commitment from institutions, government and society. We believe that universities have a strong role to play in addressing this societal issue, both as custodians of campuses where people study, work, and in some cases reside, and as institutions expected by the community to lead by example and uphold high standards. Universities take this critical challenge seriously and have implemented a range of practices specifically to address it, both on campuses and in online settings, and continue to update, improve and develop initiatives to prevent violence in any form. At a sector level, all UA members are signatories of the [Charter Against Sexual Harm](#) and have made progress in reducing the instances of gender-based violence on campus.

We agree with the Action Plan that additional measures are necessary, especially considering the varied approaches taken across the higher education sector. Universities are making significant efforts to tackle gender-based violence and were pleased to note that the Action Plan has adopted a whole-of-society approach. This approach makes clear that addressing and taking action against gender-based violence cannot be accomplished by universities alone and will require a coordinated effort across society.

To that end, we have asked other members of the community – government, business, schools, and TAFE – to join us in signing on to the [Charter Against Sexual Harm](#). Universities educate a large number of young people and other vulnerable cohorts; however, students undertaking vocational education will not directly benefit from this Action Plan as it is currently scoped. This may present a missed opportunity. Schools have also not been included in the scope of the Action Plan. Instilling an understanding of ethical principles and moral values begins during a child's formative years, so students often arrive at university with conditioned behaviours and attitudes that can present challenges when trying to modify or change them. We believe expanding this plan to include these additional cohorts will send a strong signal that gender-based violence will not be tolerated in any educational setting. The coordination of consistent actions across the community, particularly with schools and vocational education, will support universities in implementing this Action Plan, so we welcome government efforts to embed a culture of respect and inclusivity across all parts of society.

UA welcomes evidence-based solutions to combatting gender-based violence and agrees that universities have an important role to play in addressing gender-based violence and sexual harm in our communities. Gender-based violence is a complex issue and universities remain committed to using their expertise to assist in identifying the most effective and up-to-date approaches using current and emerging research. This expertise extends to collecting and assessing appropriate data, including reasonable and appropriate data capture points that reflect human experiences. Given the repository of academic experts and specialist staff working in the field of sexual harm and gender-

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<sup>1</sup> In the university setting, primary prevention of gender-based violence and sexual harm involves working across all levels of the university, for the entire university community, to change and transform the social context so that the drivers of violence are recognised, addressed and eliminated. See UA's [Primary Prevention of Sexual Harm in the University Sector – Good Practice Guide](#) (p. 3) for further information.

based violence across the sector who are familiar with the nuances of local issues relevant to individual institutions, UA encourages the government to recognise the expertise within the sector to lead efforts in prevention and response.

We commend the principles of the draft Action Plan, which are largely consistent with the guidance UA has provided to the sector in the 2023 [Sexual Harm Response Guidelines](#) and the [Primary Prevention of Sexual Harm in the University Sector – Good Practice Guide](#). Principles 3, 4, 5, and 6 are embedded in both documents and the recent [Charter Against Sexual Harm](#) is consistent with Principle 1. We look forward to further engagements with government as these principles are discussed across the sector and society in coming months.

## Part 1: Consultation on a National Action Plan

### 1. What do you see as the opportunities or challenges to implementing the proposed whole-of-institution approach?

UA's [Primary Prevention of Sexual Harm in the University Sector – Good Practice Guide](#) outlines universities' commitment to a whole-of-institution approach, summarised in this key consideration:

*Ensure university response and recovery systems are connected to primary prevention work. Work at all levels of the institution, including policy and systems change, and utilise existing research and academic knowledge unique to the university sector. (p. 5)*

Universities see this alignment with the Action Plan as a significant opportunity to further this important work.

Universities have a duty of care to ensure that all students, regardless of their location and study program, are able to learn in a safe and inclusive environment. This includes in university contexts beyond the classroom. A whole-of-institution approach to gender-based violence is an opportunity to instil in students, staff and guests to the university, from the moment they enter campus or online contexts, that gender-based violence in all its forms will not be tolerated.

The greatest challenge to this approach with students is likely to be any negative ingrained attitudes they bring with them from their pre-university lives. Universities are equipped with world-leading academic experts, many of whom work on evidence-based behavioural change programs that are co-designed with specialist sexual assault and family violence services. While these programs are constantly improving to account for developments in the research, there is still a strong need for a society-wide approach to combating these attitudes with every age group in the coming decades, if we are to fight gender-based violence in the long-term. Universities welcomed this approach within the Action Plan.

It is also critical to educate students about their rights and responsibilities when participating in workplace learning experiences and as professionals entering the workforce. It is important to note that some professions are more susceptible to instances of gender-based violence, and this will be a challenge that the Action Plan can help to address.

Universities are expanding their prevention efforts beyond their own institutions, utilising the research conducted by their academics. There is no question that there are significant challenges to changing social norms around gender inequality and gender-based violence, and all public institutions, including those in the higher education sector, have a role to play in combating and changing those norms. The Action Plan presents an opportunity to amplify this messaging in a range of contexts, including when interacting with external stakeholders.

Finally, it's important to note that the [Primary Prevention of Sexual Harm in the University Sector – Good Practice Guide](#) includes many examples of good practice in the form of case studies currently being used by universities, and these may be valuable to government in considering what a whole-of-institution approach can look like in different contexts.

## 2. Are there additional considerations a new National Higher Education Code to Prevent and Respond to Gender-based Violence could include?

The draft Action Plan should clarify how the matter of procedural fairness and principles of natural justice will be considered when formal complaints are made and how these intersect with the criminal justice system. This should be clearly articulated in conjunction with the role of government as leading by example in addressing gender-based violence.

In many cases, students who report gender-based violence to universities are doing so to seek support, advice, access to services such as counselling, support with reporting a matter to authorities, and adjustments to assist with their study. These types of cases constitute a substantial portion of incidents, with many having no connection with the university other than the fact that it is a student who was involved. Under these circumstances, universities can and do proceed on the basis of trust and support, given their duty of care to the student. However, in these cases where the alleged perpetrator has no connection with the university, and the alleged incident did not occur on university property, the process is unlikely to extend to the university initiating any kind of misconduct investigation.

When a member of the university community seeks to take formal action against another student or staff member, it's important to note that an allegation alone is insufficient to make a finding. Under common law, universities, like all institutions, have “a duty to afford procedural fairness to persons affected by the exercise of public power”.<sup>2</sup> The principles of natural justice and procedural fairness dictate that any assessment or investigation be undertaken in a fair, impartial, and equitable way. Where the person about whom the report is made is also a person to whom the university has formal obligations (such as a student or staff member), the university needs to apply the principles of natural justice and procedural fairness appropriate to the case and consistently with any policy, else they will be in breach of their duty.

Furthermore, in many cases, if a member of a university community reports an allegation of sexual harm to the police, as well as to the university, it may not be appropriate for the university to undertake a misconduct investigation in parallel to the criminal one, in case it adversely affects the criminal process. This does not mean that universities take no action during this time; however, they do have a legal obligation to provide support to both the alleged victim-survivor and the alleged perpetrator while investigations are underway.

A situation where a university receives an allegation that a student or staff member has experienced sexual harm from another student or staff member *outside* of a university-controlled environment (private homes, social gatherings not organised by the university, public transport etc.) is also a complex one under the law. For further information about the complexities of natural justice and procedural fairness obligations for universities, please see the UA [2023 Sexual Harm Response Guidelines](#).

An effective national code would need to adequately address these complexities and recognise that universities have responsibilities to all members of the university community. This includes those making allegations, victim-survivors, and alleged perpetrators. The voices and needs of victim/survivors should be prioritised, but not at the cost of ensuring principles of natural justice and procedural fairness are applied to all cases. Any attempt to do so would not survive challenge in the courts.

Moreover, the privacy and confidentiality of students who report or disclose an allegation of sexual harm, including alleged perpetrators should be protected; noting that there are circumstances in which a university's ability to maintain a student's confidentiality and privacy are limited. A national code would also need to recognise that universities have a range of responsibilities under existing legislation. UA has provided guidance on these matters in the [2023 Sexual Harm Response Guidelines](#).

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<sup>2</sup> Australian Law Reform Commission. 'The Common Law'. Australian Government, 2015.  
<https://www.alrc.gov.au/publication/traditional-rights-and-freedoms-encroachments-by-commonwealth-laws-alrc-interim-report-127/15-procedural-fairness/the-common-law-7/>.

Additionally, the draft Action Plan (demonstrating improvement across the sector through increased data transparency and scrutiny) seeks survey data to inform the status of the sector's response to gender-based violence as part of responding to the national code. Universities have committed to being transparent with data as part of the commitments as signatories to the UA's [Charter Against Sexual Harm](#), and we have committed to ongoing transparency about reports made to our universities.

There is also real value in collecting data more proactively and broadly. Whilst data on improvements is important in meeting the expectations of the national code and mitigating gender-based violence, a sector-specific survey may not have the impact the national code requires. There is opportunity to bring together sector data with national data such as the Personal Safety Survey (PSS) and the National Community Attitudes Towards Violence Against Women Survey (NCAS) and UA welcomes further discussion on this. It was pleasing to see the Action Plan describe "new comparable, national and public reporting on data", and we particularly welcome an opportunity for data on areas such as prevalence, disclosures and reports in universities to be comparable to this data at the general population level.

Ultimately, the National Action Plan needs to define the jurisdictional responsibilities of universities and the role of governments, the police and the courts in these matters, and we were heartened that the Action Plan outlines the need for further work in coming months to provide providers with legal clarity and increased guidance in this space.

### 3. How could we ensure the Code addresses the needs of different student and staff cohorts (e.g. LGBTQIA+, international, First Nations, people living with disability and higher degree research students)?

It is essential to prioritise intersectionality in response and prevention initiatives to effectively address the diverse needs of students and staff cohorts.

UA has provided guidance to the sector in addressing the needs of different student cohorts in both the [2023 Sexual Harm Response Guidelines](#) and [Primary Prevention of Sexual Harm in the University Sector – Good Practice Guide](#). Importantly, taking a whole-of-institution approach; prioritising cultural safety; foregrounding intersectionality; seeking and incorporating diverse voice, including the student voice; engaging in practices of active listening and establishing trusted partnerships; while ensuring ongoing reflection, monitoring and evaluation of services and programs are core elements of both resources.

### 4. How could student accommodation and higher education providers effectively partner to prevent gender-based violence and improve how they support victim-survivors?

UA welcomes the inclusion of private (or non-university provided) student accommodation providers in any national approach to combatting gender-based violence and sees a role for government in ensuring better coordination and communication between universities and residences which are not controlled by universities.

UA has addressed this issue through its [2023 Sexual Harm Response Guidelines](#) (page16):

*University engagement with their affiliated colleges and residential halls – including where such colleges are owned and managed independently of the university – is essential to ensure consistency between policy responses, reports and investigation approaches of all institutions. (p. 17)*

- *Accommodation providers should work in collaboration with universities to understand how each institution's sexual harm policy applies to their cohort of students living in residential colleges or halls, or other types of accommodation – regardless of whether that college or accommodation is managed or affiliated with the university.*
- *Tenancy agreements between accommodation providers and universities should include information on relevant policies, processes, report and support options, including what*

*avenues are available to students to raise concerns, and how reports of sexual harm and other behaviours of concern will be managed by third-party accommodation providers.*

Not all student accommodation providers may have partnerships with institutions, so it may be beneficial for the Government to take the lead in facilitating these partnerships as part of the coordinated effort to prevent gender-based violence and improve support for complainants.

## Part 2: Consultation on a National Student Ombudsman

### 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?

The creation of a National Student Ombudsman (NSO) would result in significant change to higher education governance. The NSO's aim is to provide expert oversight of higher education providers to support students and bring beneficial changes in how providers handle complaints. However, implementing this change must be carefully considered to avoid unintended consequences.

UA supports the idea of the NSO and the independent oversight it could provide. But, before its implementation, there are various complexities that need to be explored and addressed. This should be part of a broader regulatory reform agenda through the Universities Accord implementation process. Existing agencies such as TEQSA, and potential agencies such as a Tertiary Education Commission, should be given due consideration.

The proposal for an Ombudsman has arisen from a limited set of consultations with stakeholders around gender-based violence. In that context, UA has, in our [Charter Against Sexual Harm](#), recognised that independent oversight of universities is appropriate, and we look forward to working with government on the best mechanism to achieve this.

What is proposed, however, is an Ombudsman with substantial powers and extensive jurisdiction with respect to student matters. Such a serious change to the regulatory landscape for tertiary education deserves proper examination and broad as well as deep stakeholder engagement.

To support this process, scoping the existing higher education regulatory environment and complaints mechanisms (both across states and territories as well as Commonwealth) to identify gaps, overlaps and existing complexities would be a good first step in setting a strong foundation for any governance changes. We were pleased to see the point in the Action Plan clarifying that the NSO would “be the primary escalated complaints authority for students in relation to their providers, with jurisdictions agreeing in principle to reflect the Ombudsman in their own arrangements and refer students with complaints where relevant”. This clarity will be critical for both students and providers as the NSO takes shape. To support this, we suggest that a scoping exercise should consider the range of jurisdictional complexities of an NSO, including the types of providers it serves and its authority and accountability in Australia's federated governance context.

### Functions

To ensure that the NSO effectively contributes to the education sector and safeguards the interests of students, it is imperative that its Terms of Reference clearly delineate its purpose, remit, and the boundaries within which it operates.

The terms must distinctly outline the areas falling under its purview and, just as crucially, identify those outside its scope. Its primary function should be to provide administrative recommendations grounded in a thorough examination of whether provider administrative procedures have been adhered to, ensuring alignment with procedural legalities and principles of fairness as well as developing good practices for the sector and other stakeholders. The role of the NSO will need to be clearly defined, including identification of the issues to be handled and the stakeholders to be involved. This will, of

course, be inclusive of the NSO's role in addressing gender-based violence via its investigative powers.

To support this function, a range of skills not typically associated with an Ombudsman may be necessary to adequately cover the range of topics it would be responsible for. These specialist skill sets (for example, specialists trained in addressing gender-based violence but also people with detailed knowledge of the workings of higher education) would need to be combined with those traditionally associated with an Ombudsman. These arrangements would be complex and careful consideration should be given to any future functions and operations for the proposed Ombudsman.

Further clarity is sought on what is being proposed regarding the NSO's dispute resolution powers.

## Scope

The proposed scope of the NSO is significantly broader than matters to address gender-based violence. UA acknowledges there may be merit in a single 'one-stop shop' for escalating unresolved student grievances and complaints and providing consistency and clarity for both students and providers.

The Action Plan has highlighted the importance of keeping the NSO separate from academic matters, which is a positive step towards ensuring a fair and unbiased educational system. Any such intrusion would be a completely inappropriate undermining of institutional autonomy and academic freedom and expertise. While there may be some grey areas, it must be clear that it is not the role of the Ombudsman to embed or review curriculum, teaching methods, assessment methods or outcomes.

Essentially, for the NSO to effectively collaborate with other authorities and governance structures, it is imperative to establish consensus on its functions and scope. This agreement should safeguard academic freedom and institutional autonomy for education providers. TEQSA exists to regulate the sector on a risk-based foundation that reflects the autonomy of providers, academic freedom and autonomy, and this has been paramount to the success of Australia's higher education system. These core principles should not fall under the jurisdiction of an NSO.

## Collaboration

The success of any national body, including an NSO, hinges on the involvement of all jurisdictions and the authority of the national body to represent and make decisions for all jurisdictions.

As described previously, UA appreciates that the NSO will supersede, not duplicate, state and territory Ombuds' responsibilities. This will be essential to avoid confusion and duplication of activities, whilst providing transparency and clarity for students and providers about the NSO. It will require a dedicated commitment from all sides to overcome the complexities of this necessary approach.

Similarly, collaborating closely with regulatory authorities where appropriate, particularly the Tertiary Education Quality and Standards Agency (TEQSA), will be crucial to maintaining clarity of scope and preventing overlaps in responsibilities and regulatory purview that could result in confusion and inconsistent assessments. Consideration also needs to be given to overlaps with the Australian Appeals Tribunal (AAT), Higher Education Standards Panel (HESP), the National Anti-Corruption Committee (NACC), and other state and territory bodies such as the relevant human rights commissions, corruption commissions and discrimination bodies.

We strongly believe that the NSO should not duplicate *or* supersede the authority of these other bodies. For example, the NSO should not have the power to re-credit course fees. The existing AAT has responsibility at the national level for considering a provider's determination to not re-credit course fees based on specific criteria outlined in the Higher Education Support Act 2003. It will be crucial to clearly define the roles and responsibilities of the NSO and other bodies, such as the AAT, in order to adhere to existing authority mechanisms. How these authorities operate together requires careful consideration.

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?

### Co-design and co-implementation

Responding to student centricity in the NSO's remit and ensuring accessibility is paramount to guide staff and students in locating services and seeking necessary support. It requires a clear and singular channel for complaint escalation for all higher education students.

Measurement of accessibility should be facilitated through precisely defined Terms of Reference for the NSO and delineated procedures governing how staff and students engage with the NSO subsequent to attempting issue resolution with their respective providers.

Additionally, a collaborative approach is fundamental, ensuring that the educative materials from State and Territory Ombuds reflect the NSO role and direct students and providers to the NSO whilst enabling the NSO to focus on addressing complaints.

Higher education provider staff perspectives are integral to the co-design process, preventing adverse impacts on staff responsibilities and mitigating additional burdens resulting from the establishment of the NSO.

### Complementarity

The NSO's role should be complementary to the existing efforts of providers, aiming to enhance students' awareness of complaint handling processes, avenues for escalation, and the availability of additional support services.

The NSO may be sought for advice on individual matters depending on the nature and seriousness of the complaint; however, as noted in the NSW Ombudsman *Complaint Handling at 'Universities Australasian Best Practice Guidelines'* (2015, p. 29), this would only occur in "a small minority of more serious cases". However, this escalation would be at the behest of the university after accounting for all other procedural considerations. This approach recognises the necessity of the provider to follow due process before the Ombudsman is called to step in and review a complaint.

The clarity surrounding the NSO's responsibilities is essential to streamline processes and foster a more cohesive support system for the higher education community. Otherwise, the NSO risks becoming one of many options that students who are aggrieved with their university can use, giving no certainty or finality to any of the parties involved.

### Transparency through the full complaints cycle

It's important to note that dissatisfaction with complaints processes is often complex. For example, there are times when it is not possible, for legal reasons, for a university to communicate to a student the specific process or outcome against an individual about whom they have made a complaint. This often leads to dissatisfaction from that student, particularly when there is an educative or sanction-based outcome that means the respondent remains at the institution. Universities attempt to manage this by helping students to understand the limits of what can be legally communicated to them at the time they make their complaint and again throughout the complaints cycle. However, these efforts may not lead to satisfaction in the student's eyes. The NSO may face similar issues, and the notion of being "transparent through the full complaints cycle" raises questions about how expectations will be balanced and communicated.

### 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)?

Critical to the establishment of the NSO is the emphasis on representativeness. Success hinges on the inclusion of voices from students, experts, universities and staff. This is critical for the creation, foundation and ongoing operations of the NSO, as well as ensuring it has the authority to make recommendations across all state and territory jurisdictions. Within the principle of representativeness, consideration of the naming of the office is warranted given the underlying societal drivers that underpin the prevalence of gender-based violence.

The involvement of these various parties could initially start as a reference or working group, later evolving into an advisory body as the NSO assumes its functions. This could be modelled on the success of the Jobs and Skills Australia Consultative Forum, which will in time be reconstituted to form the JSA Ministerial Advisory Board. This phased approach ensures ongoing responsiveness to the needs of both the education sector and society, fostering a balanced and inclusive decision-making process. Additionally, this approach could support a more coordinated and effective mechanism of implementation that is responsive and proactive to needs, rather than solely reactive to concerns.

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

The Terms of Reference for the NSO should clearly stipulate that all internal complaint resolution avenues must be exhausted prior to referral, rather than act as a primary avenue for issue resolution.

Educational institutions and students alike must adhere diligently to the clearly outlined policies and procedures of providers, ensuring compliance with regulatory requirements. This sequential approach underscores the importance of exhausting internal mechanisms before resorting to the NSO, emphasising the role of the Ombudsman as a final recourse.

However, similar to existing state and territory Ombuds, the NSO could provide guidance material and recommendations to providers (in collaboration with TEQSA) on updated procedures and best practice examples for handling complaints and dispute resolution.

This guidance could also be broadened and communicated to government, industry and communities, emphasising the intersectional nature of gender-based violence.

The NSO will need to adapt as feedback emerges from ongoing processes. One way this potentially can be achieved is if feedback on both the complaints process and the responses and decisions are regularly reviewed and socialised, and themes coming out of this feedback are made publicly available to inform action plans for improvement that can be considered by universities.

Essentially, it is crucial to distinctly define the operations of the NSO at both jurisdictional and national levels, outlining its role in complementing existing government agencies. It is imperative that the NSO operates within defined parameters to ensure a harmonious coexistence with existing regulatory bodies and the preservation of the integrity of the education sector.