

University of Melbourne – input to Consultations on the Draft Action Plan Addressing Gender-based Violence in Higher Education and Student Ombudsman

Background

On 22 November 2023 Education Ministers released a Draft Action Plan Addressing Gender-based Violence in Higher Education for further consultation.

The first action proposed is a National Student Ombudsman, which would be a single point of contact for higher education students to escalate complaints if they are not satisfied with their University's (or other tertiary sector organisations') response.

Stakeholders are [now invited](#) to consider the Draft Action Plan Addressing Gender-based Violence in Higher Education and [provide specific feedback](#) on the National Student Ombudsman. The following will be entered by the University of Melbourne into the online consultation form, in relation to each question.

University of Melbourne's Responses to consultation questions relating to Draft Action Plan Addressing Gender-based Violence in Higher Education

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

The views expressed here are informed by our consultation with students, GO8 peers and through engagement with Victorian universities at a roundtable held in December 2023.

The University of Melbourne agrees with the proposition of a whole-of-institution approach to prevent gender-based violence. As currently framed, this approach describes the ways in which Australian universities should enact this approach. Less clear is the Australian government's proposed role in the implementation of this action.

We suggest that the whole-of-institution approach would be best integrated into Action 3, the proposed national code, as one of the embedded requirements and implementation approaches.

The University of Melbourne's [Respect Action Plan 2023-24](#) currently sets out our whole-of-institution approach, which aligns with Action 3 of the government's draft plan. We describe how we plan to meet our obligations to students and staff in relation to prevention, early intervention, response and sectoral best practice. Our progress against this Action Plan is reflected in our [Sexual Misconduct Annual Report](#).

In relation to the Government's draft action plan, the University has identified the need for further clarity on the scope of the changes and how the proposed regulations will be allocated between existing regulators with jurisdiction regarding Gender-based Violence in Higher Education. The Tertiary Education Quality Standards Agency, the proposed Ombudsman, the suggested new Tertiary Education Commission, along with the existing Victorian Ombudsman, the Victorian Human Rights and Equal Opportunity Commission, and the Australian Human Rights Commission all have existing or proposed responsibility to oversee concerns relating to gender-based violence in higher education. How will the reforms efficiently and seamlessly operate to ensure minimisation of the potentially competing and overlapping roles for these various agencies? Without clarity, there is a risk that navigating complaints pathways will be even more challenging for victim-survivors of gender-based violence in higher education.

The University of Melbourne strongly agrees with the principles outlined on pages 5-6 of the draft Action Plan, and we note that these broadly align with principles contained in our *Sexual Misconduct Prevention and Response Policy*. We see it as essential that an additional principle relating to procedural fairness be included. The University of Melbourne's *Sexual Misconduct Prevention and Response Policy*, includes, for example, the following: *"Enacting fair decision-making: Enacting decisions that are based on procedural fairness and are unhindered by the status, power or influence of the parties involved, and protecting and supporting those who come forward from victimisation"*.

The University of Melbourne supports the seven actions outlined in the draft, as a pathway to addressing gender-based violence in higher education. As noted above, we are concerned about the potential regulatory burden and the risk to victims/survivors given the range of institutions involved. There is a clear need for functional fluency as between the various proposed and existing regulatory mechanisms. For Victorian universities to effectively contribute to the delivery of the individual actions, we seek to be directly engaged to inform the operational details.

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

In relation to the proposed National Code, we see benefits to an agreed set of standards across higher education. We agree on the vulnerability of cohorts of students identified in the Action Plan, while suggesting that students who are minors should also be included. Clarity is needed in how the obligations of the Code will cascade to universities and other agencies, and the consequences for breaching the code.

Legally, Universities have limited ability to act in relation to many affiliated organisations, which are independently governed. Universities do not have jurisdiction to provide governance for non-affiliated third-party commercial providers of student accommodation. Further, when students attend third parties as interns or as part of their studies (whether commercial, government or not-for-profit, such as a hospital) the reach of university policies is highly variable.

Student clubs or societies, which are typically affiliated by the student unions (not by the University), have voluntarily ceded management of gender-based violence in higher education in some situations, as at the University of Melbourne. This is not uniform across the sector.

Given this variability of treatment of gender-based violence in higher education, the National Code and Ombudsman requires direct and unambiguous jurisdiction over the range of organisations listed above.

We agree that the new National Code should be implemented in a way that minimises overlap with other regulatory arrangements including the Higher Education Threshold Standards, positive duty requirements, the Support for Students policy requirements, and reporting to the Workplace Gender Equality Agency. Universities and students should be consulted directly during the development of the Code to ensure it is practicable, and to ensure that its remit and accountabilities are clear.

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)?

In developing the Code, specific consultation should be undertaken with a range of student and staff groups including: LGBTIQ+ cohorts; First Nations groups; and groups with disabilities. In addition, consultation is needed with international students and higher degree research students. All these identified student groups face different experiences of sexual violence, and different barriers to accessing appropriate support. The Code should integrate specific measures based on these consultations that universities can adopt. Some examples may include specialist training of frontline staff, tailored training sessions for students, and targeted questions to be integrated into student surveys.

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

We appreciate that this action separately proposes that student accommodation providers must comply with the sections of the National Code that relate to their operations, ensuring consistency with universities and other higher education providers regarding gender-based violence prevention and response. This approach is welcomed and will address a current gap in the regulation of student accommodation providers, whether affiliated with universities or independent third-party providers.

Across Australia, the ways in which affiliates (such as University colleges) engage with Universities' policies regarding gender-based violence in higher education varies. While a shared approach between accommodation providers and universities to gender-based violence in higher education is increasing, it remains slow, and in some universities, highly variable. For example, some colleges adopt university policies regarding gender-based violence and some do not, and that can be the case even at the same university. We support the Code explicitly requiring university affiliates and independent third-party providers to report publicly on gender-based violence within their communities.

We also welcome the regulation of gender-based violence extending to university accommodation affiliates and independent third-party providers as proposed to be included in the Code.

University of Melbourne's Responses to consultation questions relating to the 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 University of Melbourne recognises some potential benefits of the proposed national Ombudsman, particularly for addressing complaints which may extend beyond the direct reach of the University, for example with accommodation providers, clubs and societies and potentially other entities. The Ombudsman could usefully investigate matters arising in student accommodation or club settings, regardless of which university a student is enrolled in. That said, clarity is needed about when the Ombudsman can act – will it intervene when a university misconduct/disciplinary process is underway, or only once internal university processes are exhausted?

In the process of defining the role of the Ombudsman, it is important to note that unless specifically excluded by the enabling legislation, student complaints to the Ombudsman will be submitted by alleged perpetrators, respondents and defendants of sexual misconduct allegations, as well as victim-survivors. The new avenue of appeal or to bring complaints will need to be carefully designed to mitigate the risk of unjustified forum shopping or re-traumatisation of victim-survivors and/or witnesses. Further, without careful integration with existing university processes, the mere fact of additional review will occasion further victim-survivor trauma. Mitigation measures to minimise this must be a priority.

A significant concern is that the proposed Ombudsman's function is described as having the power to handle student complaints about providers' policies and processes, including on student safety, welfare, course administration, HECS administration, reasonable adjustments for students, curriculum design and content, and other matters. The current description reaches well beyond gender-based violence in higher education. We believe that the scope of the Ombudsman should be directly aligned to the proposed *National Higher Education Code to Prevent and Respond to Gender-based Violence*. This would enable the Ombudsman to have a sufficiently specialised focus and allow consistency with the National Action Plan on Violence Against Women and Children. If the Ombudsman is to consider the suggested range of student complaints, it will risk its specialist expertise. It is essential that complaints related to gender-based violence are sufficiently resourced with a specialist team.

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?

Student consultation will be essential through the process of developing a National Student Ombudsman. It is important that this consultation extends to students who may not currently be engaged in advocating on gender-based violence and includes students who are not involved in student politics, as well as those who are.

As a priority, the Ombudsman will need to be carefully designed to mitigate the risk of re-traumatisation of victim-survivors and/or witnesses, taking into account the potential for alleged perpetrators, defendants and respondents to sexual misconduct allegations to bring complaints.

While the Ombudsman should be student-centric, it will have to acquit natural justice and procedural fairness. To effectively centre students and provide transparency, it is vital that the importance and meaning of procedural fairness is understood by all involved.

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)?

If the Ombudsman's scope is intended to extend beyond gender-based violence, and to address all student matters affecting LGBTQIA+, First Nations, students with disability and higher degree research students, significant consultation is required. These cohorts will need to be consulted about their needs and the sectoral issues adversely impacting them. Again, it is critical to understand the extent of jurisdiction and whether the Ombudsman takes matters on appeal after the completion of university processes or is a forum in which complaints can be initiated.

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

The function of the Ombudsman needs to be explicit both in terms of its relationship to, and distinction from, the functions of the existing Victorian Ombudsman, the Victorian Human Rights and Equal Opportunity Commission, the Australian Human Rights Commission and the Tertiary Education Quality Standards Agency. Clarity is also needed on role of the Australian Government Department of Education.

Further information is needed about whether the Ombudsman would have a process/system review or a merits review function or both. It is ambiguous at this stage whether student complaints could be raised against organisations as a whole or against specific individuals. It is also unclear whether the Ombudsman is intended to be an advocate on behalf of students or an impartial review body. The reason for and capacity of the Ombudsman to recommend fee remission and other redress needs clarity. The proper role of educative responses should also be recognised. These issues need resolution with input from universities, students and other stakeholders to minimise regulatory and jurisdictional ambiguity.

Additionally, students have advised us that the title of “Ombudsman” is opaque and not well understood. We suggest that thought be given to a title that describes the work of the organisation. Further, there is a perception that the term is gendered, although its historical roots are arguably equivocal on this point.

In summary, clarity is needed on the following matters relating to the proposed National Student Ombudsman:

- The stage at which the Ombudsman is intended to become involved – during a university misconduct process, or when internal university processes have been finalised.
- The focus of the review function, whether it includes process reviews, merits reviews or both, and whether it is an advocate on behalf of students or an impartial review body.
- The scope of complaints able to be raised against organisations as a whole and/or against specific individuals.
- Who is able to bring complaints before the Ombudsman.
- Proposed specialist resourcing for complaints related to gender-based violence (if the Ombudsman is to consider a range of student grievances).
- Proposed measures to mitigate the risk of re-traumatising victim-survivors and / or witnesses.
- Redress or penalties available from the Ombudsman.
- Relationship to, and distinction from, other state and national regulators.