

The University of Sydney, feedback on the Commonwealth Department of Education's proposal to establish a National Student Ombudsman, January 2024

Thank you for the opportunity to provide feedback on the proposal to establish a *National Student Ombudsman* included in the [Draft Action Plan Addressing Gender-based Violence in Higher Education](#). This submission on behalf of the University of Sydney should be read in conjunction with the University's feedback on the Draft Action Plan **(attached)**.

Should the Department require any further information regarding either submission, in the first instance, please do not hesitate to contact Professor Susanna Scarparo, Pro Vice-Chancellor (Student Life), susanna.scarparo@sydney.edu.au.

The University of Sydney supports the principles and aspirations that underpin the draft Action Plan and the National Student Ombudsman proposal, and is keen to work with the Government and stakeholders to make these initiatives work for the benefit of students and the communities we serve.

However, we are under no illusions about the complexity of the task of establishing a Student Ombudsman as a Commonwealth entity, which is made more challenging by the multi-jurisdictional nature of the role it will need to play. Achieving a coherent and cohesive national approach will take time and genuine collaboration between: Commonwealth and State governments; education providers; students, staff and their representatives; residential accommodation providers; and other key stakeholders.

We are eager to be part of these discussions and offer this initial feedback to assist the identification of the key legal and practical questions that will need to be considered when designing the legal and operational framework for the proposed new ombudsman.

Consultation Question 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?

It is proposed that a National Student Ombudsman '*will bring together complaints handling functions from a number of different bodies into one single organisation and provide a mechanism for all higher education students to raise complaints about their higher education provider's policies, procedures and decisions.*'¹

The draft Action Plan suggests that, in addition to complaints about gender-based violence, the National Student Ombudsman would have '*the power to handle student complaints about their providers' policies and processes, including on student safety, welfare, course administration, HECS administration, reasonable adjustments for students, and other matters*'.

As a statutory corporation responsible for providing higher education services, the University of Sydney's core legislative framework includes the *University of Sydney Act 1989* (NSW), the *Higher Education Support Act 2003* (Cth), the *Tertiary Education Quality and Standards Agency Act 2011* (Cth), the *Higher Education Standards Framework (Threshold Standards) 2021* (Cth), the *Education Services for Overseas Students Act 2000* (Cth) and the *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2018* (Cth).

The University has a comprehensive suite of internal policies and processes for handling student concerns and grievances about a range of matters. Operating within the core framework, each of these processes is compliant with and informed by the applicable State and Commonwealth regulatory requirements, which are complex and overlapping. For example:

¹ <https://www.education.gov.au/australian-universities-accord/consultations/consultation-national-student-ombudsman>

- **sexual misconduct** – *Anti-Discrimination Act 1977* (NSW); *Children's Guardian Act 2019* (NSW); *Crimes Act 1900* (NSW); *Crimes (Domestic and Personal Violence Act) 2007* (NSW); *Sex Discrimination Act 1984* (Cth);
- **bullying, harassment and discrimination** (including reasonable adjustments for disability) - *Anti-Discrimination Act 1977* (NSW); *Work Health and Safety Act 2011* (NSW); *Work Health and Safety Regulation 2011* (NSW); *Age Discrimination Act 2004* (Cth); *Disability Discrimination Act 1992* (Cth); *Racial Discrimination Act 1975* (Cth); *Sex Discrimination Act 1984* (Cth); *Sex Discrimination (Sexual Orientation, Gender Identity and Intersex Status) Act 2013*;
- **privacy and personal information** – *Government Information (Public Access) Act 2009* (NSW); *Privacy and Personal Information Protection Act 1988* (NSW); *Health Records and Information Privacy Act 2002* (NSW); *State Records Act 1988* (NSW);
- **corruption and wrongdoing** (including Public Interest Disclosures) – *Government Information (Public Access) Act 2009* (NSW); *Public Interest Disclosures Act 2022* (NSW);
- **hazards, injuries** - *Workers Compensation Act 1987* (NSW); *Workplace Injury Management Act 1998* (NSW); *Workers Compensation Dust Diseases Act 1942* (NSW); *Workers Compensation Regulation 2016* (NSW); *Workers Compensation (Dust Diseases) Regulation 2013* (NSW);
- **student discipline** – *Education Services for Overseas Students Act 2000* (Cth); *Higher Education Support Act 2003* (Cth); *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2018* (Cth);
- **student appeals against academic decisions** (including the award of credit, special consideration for illness or misadventure and special arrangements for students who are unable to meet assessment requirements or attend examinations due to responsibilities as a carer, essential religious commitments or beliefs, sporting or cultural commitments etc) - *Education Services for Overseas Students Act 2000* (Cth); *Higher Education Support Act 2003* (Cth); *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2018* (Cth);
- **HECS and FEE-HELP refunds** - *Higher Education Support Act 2003* (Cth).

Students regularly exercise their right to external review of the outcomes of the above internal complaints processes by one or more of the following regulators, courts and tribunals:

- Anti-Discrimination NSW
- Information and Privacy Commission NSW
- NSW Health Care Complaints Commission
- NSW Ombudsman
- NSW Civil and Administrative Tribunal
- NSW Supreme Court
- Australian Human Rights Commission
- Administrative Appeals Tribunal
- Federal Circuit and Family Court of Australia
- Federal Court of Australia
- TEQSA.

Given this crowded administrative review landscape, establishing a National Student Ombudsman that operates in such a way as to achieve the goal of '*streamlining, simplifying and improving processes for escalated complaints handling for students*' will be challenging.

In considering how this goal might be met, questions including the following will need to be answered:

- Will students be required to exhaust internal processes before complaining to the National Student Ombudsman?
- Will the National Student Ombudsman handle complaints that have previously been heard and determined by other external bodies?

- Will the National Student Ombudsman handle complaints in respect of which there are other external proceedings currently on foot?
- Will the National Student Ombudsman 'cover the field', such that the State-based Ombudsmen will no longer have a role in respect of student complaints?
- How will the National Student Ombudsman distinguish between academic and non-academic decision-making?
- Will the National Student Ombudsman provide a merits-based or procedural review function?
- What powers will the National Student Ombudsman have to resolve complaints and from where will those powers derive?
- Will recommendations or decisions of the National Student Ombudsman be binding, enforceable and/or reviewable? If so, by whom?
- Who will the National Student Ombudsman be accountable to?
- Will former students have a right to complain to the National Student Ombudsman? If so, will their rights be time-limited?
- Who will pay for services provided by the National Student Ombudsman?

Consultation Question 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?

As each higher education institution has its own unique student community and culture, measures to achieve a 'student-centric' approach to complaint handling will need to be designed in partnership with providers and take account of institutional differences. While it will be important to consult with student representative organisations, we would also recommend engagement with the wider student and graduate body, including students living in residential accommodation and past complainants, to ensure that a range of views are heard. In addition, we would encourage the Department to consult widely and closely with first-responders and other front-line university staff with day-to-day responsibility for student safety and wellbeing.

Consultation Question 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 a National Student Ombudsman is established, it should be staffed with people from a range of different backgrounds representing the diverse groups of students it will be serving. Employees should have a sound understanding of intersectionality and the effect of students' personal and social identity and history on their experience of institutional processes and decision-making.

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

There are several Constitutional questions arising from the proposal to establish a National Student Ombudsman.

It is not currently clear what Constitutional head of power the Commonwealth would use to establish a National Student Ombudsman with authority to investigate and make recommendations about functions exercised by universities established and regulated under State legislation. To the extent that the intention is for the Ombudsman to investigate matters concerning gender-based violence in student accommodation, this question also arises in respect of private providers and residential colleges, noting that many of the latter are also statutory corporations established under State law.

The NSW Acts establishing the residential colleges affiliated with the University of Sydney are the:

- [*Sancta Sophia College Incorporation Act 1929*](#)
- [*Saint Andrew's College Act 1998*](#)
- [*Saint John's College Act 2018*](#)
- [*Saint Paul's College Act 2018*](#)
- [*Wesley College Incorporation Act 1910*](#)
- [*Women's College Act 1902*](#).

In addition, it is proposed that the National Student Ombudsman will have '*authority to consider whether the actions taken by providers are wrong, unjust, unlawful, discriminatory or unfair, and whether they meet the expectations of providers established through legislation*'.

Given that Federal judicial functions may only be exercised by the classes of courts listed in section 71 of the *Commonwealth of Australia Constitution Act*, it is not clear to the University how the proposed power to determine that an action is 'unlawful' or 'discriminatory' would be Constitutionally valid.²

² See *Brandy v Human Rights and Equal Opportunity Commission* [1995] HCA 10; (1995) 127 ALR 1.

The University of Sydney, feedback on the Commonwealth Department of Education's Draft Action Plan Addressing Gender-based Violence in Higher Education. January 2024

Thank you for the opportunity to provide feedback on the Commonwealth Department of Education's [Draft Action Plan Addressing Gender-based Violence in Higher Education](#). This response on behalf of the University of Sydney should be read in conjunction with the University's feedback on the Department's concurrent proposal to establish a National Student Ombudsman (**attached**).

Should the Department require any further information regarding either submission, in the first instance, please do not hesitate to contact Professor Susanna Scarparo, Pro Vice-Chancellor (Student Life), susanna.scarparo@sydney.edu.au.

The University of Sydney supports the values and goals championed in the Draft Action Plan, and agrees that, like all members of Australian society, students and staff in higher education deserve to be and feel safe. We are committed to working with all levels of government to prevent and address the harm that is caused by sexual assault and sexual harassment, and to playing our role in the community-wide effort required to change the underlying social conditions that permit and promote gender-based violence, including sexual violence.

The University's ongoing commitment to creating a safer and more supportive environment for its community of staff, students and affiliates is demonstrated by the significant work already underway. As evidenced by our [2022 Annual Report on Sexual Misconduct](#) we value transparency and openness in our education and support initiatives that are co-designed with key stakeholders and underpinned by trauma-informed resolution processes. We recognise that there are a complex array of differing personal, organisational and legal factors at play in each incident of sexual violence and strive to meet the needs of all members of our community in a compassionate, safe and fair manner.

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

We acknowledge that a whole-of-institution approach to the prevention of gender-based violence requires leadership support and a strategic approach to promoting the safety and wellbeing of all members of our community. The safety and wellbeing of University of Sydney students, staff and partners is fundamental to our pursuit of excellence in education and research, and the implementation of our Safety Management System across the University provides a systematic approach that improves our safety culture and performance. Our safety targets are set yearly by the University Executive and monitored quarterly against a Positive Safety Index, which aggregates 10 separate safety measures.

The University of Sydney takes a whole-of-institution approach to the design and implementation of policies and procedures relating to sexual violence, including with respect to prevention, information provision, case management and immediate response to students and staff that have experienced sexual assault or sexual harassment. All current and former students and staff, including casual contractual staff, are eligible to receive support, including on historical cases. Our approach is to provide tailored support to our different stakeholders, as desired by them and appropriate to their circumstances. We take an inclusive and intersectional approach to implementation of policies and procedures. Key initiatives that reflect the University's dedication to promoting the safety and wellbeing of its staff and students include:

- **Safer Communities Advisory Group**
Chaired by the Pro-Vice Chancellor (Student Life), this group was formed to provide the opportunity for regular consultations between the University and representative student associations every two months. Consultation occurs on policy matters, programs and education/awareness campaigns, relating to the student experience of sexual misconduct. It

includes representatives from a cross-section of the University community, including the Office of the Vice-Chancellor and President, the Student Affairs Unit, Student Wellbeing Services, Protective Services, and the Residential Colleges.

- **The 'Consent Matters' module**

The Consent Matters module covers topics such as affirmative consent, bystander intervention, communication skills, and respectful relationships. Since 2018, approximately 150,600 students have completed this online module. In 2023, a total of 21,793 students completed the online module.

- **In person consent workshops for student leaders and first year students**

The University's Safer Communities Office facilitates in person Consent workshops for all student leaders and first year students residing in University owned student accommodation and Residential Colleges. This training covers topics such as affirmative consent, reporting and support options, and bystander intervention and is delivered each semester. Since 2022, the workshops have adopted a peer facilitation model allowing improved engagement and co-design with students. In 2023, 49 Consent workshops were delivered to and attended by 1,272 students.

- **First responder training for student leaders and student-facing staff**

Since 2018, in collaboration with Full Stop Australia, the University's Safer Communities Office has provided first responder training for student-facing staff and student leaders, to equip them with the knowledge and skills required to respond to disclosures of sexual misconduct. In 2023, 12 in person training workshops were delivered to upskill 134 staff members, and an additional 427 staff completed the equivalent online module. In 2023, 8 workshops were delivered to upskill a 147 students leaders of Residential Colleges.

In 2023, the University also introduced a tailored consent education module for all student leaders of clubs and societies as part of the Student Leadership Co-design Training project. This module was implemented to better equip student leaders to effectively support their peers who have disclosed sexual misconduct. In 2023, 355 students completed the module. Student leaders were also invited to pilot Ethical Bystander training, and 54 students have completed this training. In 2024, Ethical Bystander training will be rolled out to all student leaders in clubs and societies.

- **Higher Degree by Research (HDR) Supervisors Respectful Relationships training**

This training is essential for all HDR supervisors. Delivered by the University's Safer Communities Office, facilitators lead interactive discussions on professional boundaries, power imbalances, and how to support students who have experienced sexual misconduct. The training was developed in collaboration with HDR supervisors and students and is based on the Australian Council of Graduate Research 'Respectful Research Training' resources. In 2023, 179 HDR supervisors completed this training across 12 workshops.

These initiatives are underpinned by the [University's Roadmap to Prevention of Sexual Misconduct](#), and relevant policies and procedures, including:

- [Student Sexual Misconduct Policy 2023](#)
- [Student Sexual Misconduct Response Procedures 2023](#)
- [Staff Sexual Misconduct Policy 2023](#)
- [Staff Sexual Misconduct Response Procedures 2023](#)
- [Guiding Principles for Responding to Claims of Historical Sexual Abuse](#)
- [Bullying, Harassment and Discrimination Prevention Policy 2015](#)
- [Bullying, Harassment and Discrimination Resolution Procedures 2015](#)
- [Staff and Affiliates Code of Conduct 2021](#)
- [Student Charter 2020](#)
- [Work Health and Safety Policy 2016](#)

In considering the challenges to implementing the proposed whole-of-institution approach, the University would suggest that attention be given to:

- **Inclusive language**

The term "Gender-based violence" is not universally adopted and we are concerned that it has the capacity to alienate some victim-survivors of recent and historic sexual violence. In our experience, although sexual violence is perpetrated predominantly by men against women and LGBTQIA+ people, straight cis-gendered men, including Aboriginal and Torres Strait Islander men and men living with a disability, are also victims. In the University's view, a shift towards use of the more neutral terms "sexual violence", "sexual misconduct", "sexual assault", and/or "sexual harassment" would be more inclusive.

- **Coordination and collaboration**

The University's Safer Communities Office plays a vital role in implementing the University's whole-of-institution approach to preventing, addressing, and reporting on sexual misconduct. Specialist staff within the Safer Communities Office collaborate with departments and faculties across the University to provide tailored support to all current and former students and staff. This team also designs and facilitates preventative education across the University to both students and staff. This is an effective model that allows for identified trends to be directly addressed via preventative education. For universities lacking a similar model, there may be challenges in effectively coordinating a seamless approach.

- **Reporting**

There is a need for clear definition and use of terms and consistent measures when publicly reporting on progress and gaps in preventing and responding to sexual violence. This is challenging in a multi-jurisdictional environment. Without clarity and consistency, benchmarking may not accurately reflect the experiences of staff and students and result in misleading and counter-productive narratives.

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

Care should be taken to avoid duplication of effort and resources across the higher education sector. For example, the Government should consider the actions that higher education providers will need to take to comply with the new "positive duty" in the Sex Discrimination Act 1984 (Cth) for employers to take reasonable and proportionate steps to eliminate harmful behaviours such as sexual harassment, sexual assault, sex discrimination and victimisation. The University has undertaken a gap analysis and is in the process of developing an action plan to meet its obligations under the Act.

The Respect at Work Action Plan will:

- be an umbrella document that captures relevant existing planned actions, and anything additional endorsed through the Gap Analysis;
- assign responsibilities and timelines; and
- provide a clear roadmap for the University's ongoing commitment to preventing and responding to relevant unlawful conduct.

The Respect at Work Action Plan will be developed in early 2024, once University leadership has considered and endorsed the recommendations from the Gap Analysis.

In addition, consideration should be given to the following when developing a new National Higher Education Code to Prevent and Respond to Gender-based Violence:

- Consultation should encompass a broad range of stakeholders, including first-responders and other front-line university staff with day-to-day responsibility for student safety and wellbeing.

- Detail should be provided about if and how State-based ombudsmen will continue to support students in light of the proposed Commonwealth National Student Ombudsman.
- Information should be provided about the proposed purpose and role of the new unit to implement and oversee the National Higher Education Code.
- Detail should be provided about how the Code will interact with existing legal obligations and regulators in this space, including state based WHS legislation and regulators.

Consultation Question 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)?

Comprehensive consultation on the proposed development of and future changes to the Code is crucial. Key stakeholder groups for higher education providers are the student and staff networks that focus on the experiences of diverse communities, including LGBTQIA+, international and Aboriginal and Torres Strait Islander people, people living with disabilities, and higher degree by research students. At the University of Sydney, the newly established role of Deputy Vice-Chancellor Community and Leadership is designed to provide strategic direction and oversight for the University's culture, diversity, equity, and inclusion. We would recommend consultation with the holder of this and similar roles in other higher education institutions.

In general, it would be beneficial to consider the needs of all people from culturally, linguistically, and religiously diverse communities, in addition to international students and staff.

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

University of Sydney students have access to several accommodation providers, including some owned by or affiliated with the University. Other accommodation providers have no legal relationship with the University. When considering how student accommodation providers should partner effectively to prevent gender-based violence, including sexual violence, and improve victim-survivor support, the following factors should be considered:

- **Language**

When addressing the possibility of a victim-survivor needing to give multiple accounts of their experience, it would be preferable to use language that highlights that the aim is to "minimise" the number of times they will need to tell their story, rather than create an expectation that retelling is "not required." While the goal is to avoid retraumatising a student, additional details may be necessary if a complaint is being pursued, even in circumstances where universities and accommodation providers are working effectively together.

- **Governance**

Clarity is needed regarding the proposed oversight and management of sexual violence in residential colleges (many of which are statutory corporations established under State law) and purpose-built student accommodation (PBSAs), particularly those with cases involving students from different higher education providers or perpetrators and victims from different accommodation providers.

- **Homestay and private rental accommodation**

Given the recognised housing shortages in capital cities and the high numbers of international and exchange students, it is crucial to consider the unique circumstances of students living in homestay situations and private rental accommodation. This could include students in subletting and other non-traditional arrangements, to ensure comprehensive support is provided across various living scenarios. There may be an opportunity for student accommodation and higher education providers to collaborate more effectively, to offer more education and information to students and provide tailored support for victim-survivors in different living arrangements.