



INDEPENDENT
HIGHER EDUCATION
AUSTRALIA

IHEA SUBMISSION

ISSUES PAPER ON NATIONAL HIGHER EDUCATION CODE TO PREVENT AND RESPOND TO GENDER-BASED VIOLENCE

28 June 2024

IHEA Submission

Consultation on Issues Paper on National Higher Education Code to Prevent and respond to Gender–based Violence

Independent Higher Education Australia appreciates the opportunity to provide feedback on the Department of Education's (DoE) Issues Paper on National Higher Education Code to Prevent and Respond to Gender–based Violence, for which submissions are due by 28 June 2024.

Overview of Submission

IHEA looks forward to working with DoE to implement the National Higher Education Code to Prevent and Respond to Gender–based Violence (National Code). IHEA and independent higher education providers have taken a leadership role in addressing issues that affect student safety and wellbeing, including gender–based violence. This has included the setting up of a Student Wellbeing and Safety Community of Practice within our membership to share learnings and best practice approaches, at which DoE has been a participant. We look forward to continuing this partnership arrangement on such an important issue, including through the participation of an IHEA board member on DoE's Expert Reference Group to develop the National Code.

It is understood that the National Code will be established under its own legislation, with the National Code itself being a legislative instrument. As proposed, the National Code will align with the National Plan to End Violence against Women and Children 2022–2032 and include seven standards, as well as definitions around gender–based violence and what entails a whole–of–organisation approach.

The seven proposed standards propose to embed a whole–of–organisation approach to responding to and preventing gender–based violence and outlines proposed expectations and requirements on providers under the following key areas:

- Governance and leadership (to ensure accountability at the highest level and to reflect how addressing gender–based violence is core business) .
- Policies (to enable a positive, organisation–wide culture that addresses the drivers of gender–based violence and prioritises the safety of victim–survivors).
- Procedures (to ensure that victim survivors are safe and supported and perpetrators are held to account)
- Education and training (to increase awareness of gender–based violence across the organisation to maximise the effectiveness of prevention and response efforts).
- Support services (to ensure all victim–survivors and perpetrators have access to expert–led support specific to their experiences).
- Data and reporting (to provide transparency to ensure providers are accountable for their performance).
- Student accommodation (to ensure victim–survivor residents are safe and supported where they live).

As a matter of course, and as we have raised in discussions on the proposed model of the National Student Ombudsman, the application of the National Code should embed the principles of procedural fairness. With respect to the seven proposed standards, they outline a detailed set of requirements for inclusion in the National Code. IHEA believes that the National Code should be implemented commensurate with providers' size and scale. In "regulating quality" the Issues Paper notes the importance of a phased approach, which IHEA supports. This is particularly important as an approach that is only compliance–focussed will not be sufficient to achieve a high quality and best practice approach.

The newly established gender–based violence Unit in DoE will have responsibility for ensuring providers' compliance with the National Code, as well as working to build the capability of providers and share best practice

and emerging evidence. IHEA see the Unit as having a pivotal role in working with and supporting providers to achieve the National Code's objectives. This can be done through developing a repository or library of resources; webinars and master classes on specific issues; frequently asked questions; templates; and sharing of learnings and best practice for all models of provider. Developing strategies, case studies and examples against each of the seven standards for different models of provider, including smaller scale operations; online only providers; and those that will not have resources to undertake training. The Unit can support in recommending training providers, but also in facilitating the provision of training for smaller scale providers.

However, the National Code, which will set out a set of rules that need to be met does not necessarily and seamlessly align with an approach of education, collaboration and learning. As such, the National Code needs to be written in such a way as to not prescribe a one size fits all approach, but rather sets out workable arrangements for each type of provider, and their varying business models.

For example, the implementation of the National Code needs to reflect that independent providers will have varying governance arrangements as well as variable support services, which may also be commensurate with the scale of the provider. As such, the National Code will need to be flexible in its definitions to ensure that all models of provider are catered for equally. Noting that higher education providers will differ in their size, resources and number of staff a scaled and risk-based approach will be needed in working with providers which are of a smaller scale. As a matter of course, compliance should take the form of transition and education in much the way that the Support for Students Policy is being implemented. This should be an ongoing approach of continuous improvement.

Meeting all of the proposed expectations and requirements of the seven standards outlined in the Issues Paper may not be achievable for all providers immediately. Options may include the development of an overarching standard – as per the Support for Students Policy – that links to a provider's existing policies that address gender-based violence could be a first step to build upon. Similarly, addressing a subset of the requirements and expectations of each standard could allow smaller providers to meet initial targets while they build capacity, with the support of DoE.

IHEA believes the National Code should also include vocational education and training (VET) students, to avoid an arbitrary distinction based on the type of tertiary course that a student is undertaking. Dual sector providers will be educating both higher education and VET students within the same organisation, so it would be appropriate that the National Code is in place to prevent and respond to gender-based violence of all tertiary students

It is recommended the National Code be reviewed after five years, but after the first year, DoE undertake analysis and seeks feedback on the operation of the National Code to ensure that desired outcomes are being progressed, without unintended consequences. We emphasise that supporting materials to facilitate continuous learning will be pivotal in their practical support of the National Code.

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?

For the purposes of the National Code, the proposed definition that gender-based violence is "any form of physical or non-physical violence or abuse by a person that is underpinned by gender-based power inequalities, rigid gender norms and gender-based discrimination that results in, or is likely to result in, harm, coercion, control, fear or deprivation of liberty and autonomy" appears comprehensive.

It is recommended that DoE's approach to compliance should be one of education and continuous improvement to achieve best practice. This approach, including a period of transition, was a welcome part of the implementation of the Support for Students Policy, following feedback from IHEA and other stakeholders. The transition period will depend on the scale of the providers and for smaller providers should be 12 months. In addition to compliance with the National Code, it is recommended that DoE invest in developing examples and case studies of the different forms gender-based violence takes through the preparation of guidance materials and frequently asked questions.

The paper acknowledges short– medium– and long–term approaches to regulating quality. In terms of achieving a high quality and high performing sector in preventing and responding to gender–based violence, a regulatory and compliance based approach will only achieve part of the outcome. It can be difficult to regulate for excellence and best practice. As such, it will be critical that DoE takes a collaborative approach to work with and support the sector in achieving the best possible outcomes.

With respect to independent higher education providers which have been at the forefront of addressing gender–based violence, an educative and partnership approach will ensure that independent providers continue to take on a leadership role in this important area.

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)?

There are a number of regulatory overlays and requirements that will intersect with the National Code, including the TEQSA Higher Education Threshold Standards, the National Student Ombudsman, the ESOS National Code. Work Health and Safety laws, the Support for Students Policy and the Positive Duty requirements. The latter of these places a legal obligation on organisations and businesses to take proactive and meaningful action to prevent relevant unlawful conduct from occurring in the workplace or in connection to work, and so will have a close connection with the requirements of the National Code, noting the National Code also addresses issues for students, which Positive Duty does not. Further, while the National Code will fill some gaps that each of these arrangements in terms of preventing gender–based violence against staff and students in a higher education provider, there will be overlaps and intersections. Consistency between the requirements, ensuring there is no duplication and clarity about when each of the regulatory requirements applies will be critical.

It is suggested that DoE develops a matrix with examples to show the connections as well as the distinctions between the different frameworks and when, for example, an issue would be addressed through compliance under the National Code as opposed to a matter, for example, that falls under the Support for Students Policy. Further, it is understood that if the National Student Ombudsman makes recommendations to a provider, enforcement of those decisions will occur by the specialist Unit in DoE under the National Code, although the Unit won't itself accept complaints. These distinctions and clarity should be clearly explained to providers and students.

Understanding the interplay between all of these arrangements and agencies will assist providers in being able to understand and meet the requirements of the different frameworks.

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 and why.

The Issues Paper appears to take a whole of organisation approach to protect and promote the safety of students and staff. As outlined below it proposes seven standards, each of which with identifies expectations of providers. There are also a number of proposed requirements for providers to meet under each standard.

As discussed elsewhere in this submission a staged approach to implementing the standards for smaller providers may be appropriate, either through first developing an overarching standard with reference to relevant policies that address gender–based violence and then meeting some of the requirements that are outlined for each standard while the provider builds capacity and capability.

A transitional approach will ensure that there is a collegiality and support for providers in meeting all of the proposed requirements. Amendments to the standards can be made over time based on a continuous improvement approach and following the sharing of learnings across the sector, facilitated by DoE.

Accountable governance and leadership

A standard on governance and leadership ensures accountability at the highest level and reflects how addressing gender-based violence is core business

This standard could include the following expectations of providers:

- The governing body and leadership continually demonstrate collective accountability for preventing and responding to gender-based violence across the organisation.
- The governing body and leadership embed a culture of safety, prevention and quality response efforts across the organisation.
- The governing body and leadership are transparent about preventing and responding to gender-based violence with their students, staff and the broader community.

Effective organisational policies and practice

A standard on policies and practice enables a positive, organisation-wide culture that addresses the drivers of gender-based violence and prioritises the safety of victim-survivors

This standard could include expectations that providers:

- Ensure all relevant policies prevent and respond to gender-based violence.
- Ensure policies are effectively and consistently implemented across the organisation to ensure collective performance, compliance and accountability.

Trauma-informed, safety-first procedures

A standard on procedures ensures victim-survivors are safe and supported, and perpetrators are held to account

This standard could include expectations that providers:

- Ensure all procedures – from disclosures to appeals – protect the safety of both victim-survivors and the broader community.
- All people involved in informal and formal procedures know and understand the effects of violence on victim-survivors.
- Enable perpetrators to be held to account and providers support them to stop their violent behaviour.

Evidence-based education and training

A standard on education and training increases awareness and understanding of gender-based violence across the organisation to maximise the effectiveness of prevention and response efforts

This standard could include expectations that providers:

- Continuously build the knowledge and skills of students and staff to challenge the drivers of gender-based violence and advance gender equality, diversity, respect and inclusion.
- Ensure victim-survivors always receive an effective and compassionate response.

[Expert and timely support services](#)

A standard on support services ensures all victim–survivors and perpetrators have access to expert–led support specific to their experiences

This standard could include expectations that providers:

- Ensure students and staff affected by gender–based violence receive support services to meet their specific needs.
- Provide specific resourcing for the delivery of quality support services.

[Transparent data and reporting](#)

A standard on data and reporting provides transparency to hold providers accountable for their performance. A standard on data would enable the Department to create a national dataset that will contribute to the evidence base and be included in an annual report to Parliament through the Australian Government Minister for Education. Requirements for providers to collect and share data would be balanced with the Government’s commitment to uphold informed consent and protect individuals’ confidentiality and privacy.

This standard could include expectations for providers to:

- Create transparency on provider performance through data reporting, that drives improvement and accountability.
- Contribute to the creation of a nationally consistent dataset to measure sector–wide prevalence and progress.

[Safe student accommodation](#)

A standard on student accommodation ensures victim–survivor residents are safe and supported where they live

A key goal outlined in the Action Plan is to foster stronger collaboration between higher education providers and student accommodation providers, regardless of whether they are owned and/or operated by higher education providers or standalone providers.

Student accommodation that is owned and/or operated by a higher education provider will be required to meet standards of the National Code regarding:

- Governance and leadership.
- Policies.
- Procedures.
- Education and training.
- Data and reporting, where possible.

The elements of each standard appear to be comprehensive. We understand that there is currently some discussion about separating governance from leadership in the standards, given that governance seeks to identify accountability at the highest level of an organisation, whereas leadership focusses on inspiring and developing a culture that will be necessary to support a whole–of–organisational approach. There are good reasons that would support governance and leadership being combined into a single standard or separated into individual standards. Regardless of the approach, the expectations of the standard, and requirements on the provider, need to be clear.

Some independent providers, of a smaller scale, are likely to require greater support from the DoE unit in implementing strategies to their business and governance model, as well as support through resources, such as frequently asked questions, case studies and support in the provision of training within their organisation.

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

There are a number of requirements identified under each standard, however, it may take some time for smaller providers to build up capacity to meet all requirements. For example, with respect to data and reporting, it will be important for DoE to specify the timing and regularity of reporting. In the Issues Paper, it reflects that data be provided to DoE 'on a regular basis', and a number of possible types of reports are identified. In the short-term, reporting on specific events should be included, with a view to expanding reporting over time to include demographics of victim-survivors and alleged perpetrators. Further, DoE should be clear about when data is to be reported, and if possible, to be streamlined so it is included as a dedicated section as part of other reporting arrangements.

The iterative approach to building capacity to meet the requirements of all of the standards, particularly those providers of a smaller scale, is recommended. As part of a transition period, smaller providers could put in place an overarching standard to prevent and respond to gender-based violence that links to relevant policies, along the lines of how the Support for Students Policy was implemented. During the period of transition, each standard could be implemented and built up over time. In addition to the National Code, it will be important to develop guidance for providers and to work collegiately to facilitate an educative approach to continuous improvement.

The elements of each standard appear to be comprehensive. It is recommended that if issues arise that have not been covered within each standard that a continuous improvement and education approach be adopted. This could be in the form of case studies and frequently asked questions.

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

It will be crucial for DoE to understand and reflect the unique profiles of independent higher education providers and to support, resource and partner with us in ongoing prevention work.

To put in place effective strategies to prevent gender-based violence and to achieve best practice outcomes, it will need to be contextualised to, and appropriate for, the diversity of a provider's student bodies. For example, faith-based providers have untapped potential to make positive changes and contribute to gender-based violence through prevention and response in their broader communities. Whole-of-organisation prevention efforts will need to consider a range of issues, such as religious beliefs, demographic considerations, older student bodies, diverse cultural needs and a large proportion of online students.

Recognising that providers will have different student and staff demographics, should be able to address diverse needs, for example, culturally sensitive support services may be important for some cohorts. Further, providers with campuses in various locations (regional, metropolitan, or international) should consider contextual factors. Regional campuses might face some unique challenges through their isolation, and international campuses, where they may be different cultural and religious approaches, will require tailored approaches.

Providers of a smaller scale will require assistance in developing and implementing strategies to prevent gender-based violence. This includes identifying and providing training and in the context of a provider's business model, whether only online; a faith-based provider; or a small provider with limited resources. The support from the Unit will be crucial to ensuring all providers have the capacity and capability to achieve the ambitions of the Code.

The final form of the standards needs to reflect the diversity of models and issues within providers to ensure fit-for-purpose application (i.e. there may need not be in-person training for online only students). Standards which allow for flexibility, are more descriptive and less prescriptive and allow for providers to showcase how

they are meeting the standards will benefit everyone and facilitate progress in addressing and preventing gender-based violence, which IHEA strongly supports.

With respect to student accommodation, which may represent higher-risk environments, we note the proposed standalone standard to develop policies and support services to address safety issues and concerns in such settings.

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

Student accommodation providers do represent a different challenge to prevent and respond to gender-based violence because they are where the student lives, not just studies, so it is an around the clock approach. The National Code recognises this through proposing 'a standard on student accommodation ensures victim-survivor residents are safe and supported where they live' The focus of a standalone standard is considered appropriate.

The National Code recognises that student accommodation may be owned and operated by entities other than higher education providers, and identifies that the Australian Government is exploring options for a new regulatory framework for standalone student accommodation providers. This would require standalone accommodation providers to meet standards of the National Code.

The Issues Paper states that until such a framework is established, 'it is expected' that standalone accommodation providers 'will work to meet the National Code and collaborate with the relevant higher education provider/s to align as far as possible their policies, processes and practices in relation to gender-based violence'. However, while this may be an expectation, it does not appear that there is anything to compel standalone providers to align with higher education providers in terms of addressing gender-based violence, so it is recommended that the new framework be progressed quickly so that it can be operational in concert with the introduction of the National Code. This will be critical, given that the accommodation environment will be where students spend considerable time, and is effectively there home, and a less public environment where students may be more vulnerable.

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

There are resources and materials already available, such as Our Watch, Australia's National Research Organisation for Women's Safety (ANROWS) and 1800RESPECT, which have been created in relation to producing evidence to prevent, and counselling support for, violence against women and children. While these are valuable resources, many providers that will be responsible for the delivery of prevention education will require additional materials and resources that are developed with higher education providers specifically in mind, in much the way that the suite of Respect@Work resources have been developed for workplace settings.

In the first instance, providers will require training which is geared towards upskilling key staff, especially those responsible for the delivery of training to students and staff. To embed best-practice primary prevention education and activities, providers will need to be trained in recognising and understanding the drivers of gender-based violence, how to challenge and address them, how to recognise, create and implement best-practice prevention education programs and how to evaluate their effectiveness.

A repository developed by the Unit (similar to ANROWS' digital library/evidence portal) where providers can access examples of good practice, share resources, learn from each other and collaborate is a good way forward. Applications to access grants that are administered by the DoE Unit will be important for providers and their peak bodies, which access specific criteria, to access to support the delivery of best practice training.

In addition, the DoE Unit should work closely with the National Student Ombudsman to raise awareness of specific issues through campaigns, workshops, and events. This will assist in promoting a culture of respect, consent, and bystander intervention. From a reporting perspective, DoE should prepare user-friendly templates

to support reporting of information and data to DoE. Risk assessment templates may also be beneficial to assist smaller providers.

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

IHEA's view is that all forms of gender-based, domestic and sexual violence, including same sex, should be covered under the National Code to ensure support for victim survivors. The definition should be broad enough to cover all of these scenarios.

With respect to regulation of the National Code, the DoE Unit should ensure they take an educational approach and share learnings across the sector. DoE is well placed to do this which will support continuous improvement and best practice approach. Through the Unit, DoE should take a partnership approach with the independent higher education sector, who have been proactive in addressing gender-based violence. This includes the active participation of an IHEA Board Member on DoE's Expert Reference Group to develop the National Code.

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

After 12 months, there should be an analysis and feedback sought about the impact the National Code to ensure it is having the desired effect, without leading to unintended consequences. A full review should not occur at this point, but rather a check in that arrangements are on track.

A more fulsome review of the National Code should occur after five years of operation. This will enable the DoE to work with providers collaboratively and collegiately to support its implementation, without making changes.

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

As reflected elsewhere in this submission, IHEA's view is that examples of good practice should be highlighted and shared with the sector. However, it may be more appropriate to develop guidance as a companion to the National Code, rather than embedding within the Code. This will allow for more mature case studies to be developed and facilitate a continuous improvement and educative approach. It will also allow flexibility to develop case studies and other guidance over time without requiring changes to the National Code.

In addition to resources available through abovementioned organisations, such as Our Watch, ANROWS, and 1800 RESPECT, best practice examples and guidance should be developed in partnership with the sector for each of the seven standards. There are already some examples that the DoE Unit could consider, in the faith-based context, including the work of organisations such as the National Church Life Survey (NCLS); the National Anglican Family Violence Project (NAFVP); the Social Work Innovation Research Living Space (SWIRLS) at Flinders (especially their recent work with the University of Divinity for the Lutheran Church in Australia); the Higher Education Private Providers – Quality Network (HEPP-QN); Australian Baptist Ministries' (ABM) work in gendered violence prevention; and the recommendation of victim-survivors (as reported in research from ANU's Centre for Social Research and Methods) to engage with and promote gender equality.

These are just some opportunities, which we would be looking to the DoE Unit to connect with to identify and/or develop best practice examples for learnings and enhancing capability. These examples will need to be designed and contextualised for different scenarios and models.

The National Code should not necessarily be the best mechanism to promote best practice. Compliance with the national Code is only part of the part response to addressing and enhancing capabilities and strategies to prevent gender-based violence. Companion guidance to the National Code, which can take various forms, should be the vehicle for sharing examples of best practices. It can easily be updated and evolve and expended without requiring changes to a legislative instrument.

For its part, IHEA will utilise its Student Safety and Wellbeing Code of Practice to generate discussion, including through engaging with experts to enhance learning to support model provider behaviour in addressing and preventing gender-based violence.

Who We Are

Independent Higher Education Australia Ltd. (IHEA) is a peak body established in 2001 to represent Australian independent (private sector) higher education institutions. Our membership spans independent universities, university colleges and other institutes of higher education, all of which are registered higher education providers accredited by the national higher education regulator, TEQSA or associate members seeking registration.

Our Vision is that: students, domestic and international, have open and equitable access to world class independent higher education in Australia, built on the foundations of equity, choice, and diversity.

Our Mission is to represent independent higher education and promote recognition and respect of independent providers as they contribute to Australian education, the Australian economy, and to society in general. We achieve this by promoting continuous improvement of academic and quality standards within member institutions, by advocating equity for their staff and students, and by delivering services that further strengthen independent providers' reputations as innovative, sustainable, and responsive to the needs of industry and other relevant stakeholders in both higher education and vocational education and training. IHEA's commitment is to excellence, productivity and growth in independent higher education being delivered through a trusted Australian education system underpinned by equity, choice, and diversity.

IHEA members have different missions, scales, and course offerings across the full AQF range (Diplomas to Doctorates). Members comprise:

- Four private universities (Bond University, Torrens University, University of Divinity, Avondale University).
- Five University Colleges (Alphacrucis University College, Moore Theological College, Australian College of Theology, Sydney College of Divinity and SAE University College).
- Six self-accrediting institutes of higher education (Griffith College, Kaplan Business School, Marcus Oldham College, Excelsia College, The College of Law, and the Australian College of Applied Professions).
- Seventy four not-for-profit and for-profit institutions of Higher Education; and related corporate entities.

IHEA members teach approximately 74 percent of the students in the independent sector (i.e., more than 130,000 students) and educate students in a range of disciplines, including law, agricultural science, architecture, business, accounting, tourism and hospitality, education, health sciences, theology, creative arts, information technology, and social sciences.

IHEA holds a unique position in higher education as a representative peak body of higher education providers. Membership in IHEA is only open to providers registered with the Australian regulator – TEQSA. However, some IHEA members are dual and multi-sector providers who also deliver VET and/or English Language Intensive Courses for Overseas Students (ELICOS) courses.

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