



Appendix B - Addressing gender-based violence in the current regulatory landscape

Higher education providers

Higher education providers are registered by the Tertiary Education and Quality Standards Agency and must comply with the [Higher Education Standards Framework \(Threshold Standards\) 2021](#). The Threshold Standards set out the minimum acceptable requirements for the provision of higher education in or from Australia by higher education providers registered under the *Tertiary Education Quality and Standards Agency Act 2011* (TEQSA Act).

In the context of ensuring safety and wellbeing, higher education providers are required to:

- provide avenues and contacts for supports for students if needed
- ensure the availability of specific types of personal support services
- ensure that support services offered reflect the needs of student cohorts
- promote a safe environment
- appropriately manage critical incidents.

Under the [Higher Education Support Act 2003](#), higher education providers are required to have grievance and review procedures in place for student complaints on academic and non-academic matters. Providers must also have, comply with, and report on, a policy that supports students to successfully complete the units of study they are enrolled in (i.e., [Support for Students Policy](#)).

All Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) registered providers must comply with the [ESOS Act 2000 and the National Code of Practice for Providers of Education and Training to Overseas Students 2018](#). The Education Services for Overseas Students (ESOS) legislative framework supports international students studying in Australia, protects and enhances Australia's reputation for quality education, and supports the integrity of Australia's student visa program.



Under the ESOS National Code, providers are required to take all reasonable steps to provide a safe environment on campus and advise overseas students and staff on actions they can take to enhance their personal security and safety.

Specific to ensuring support for staff, under the *Sex Discrimination Act 1984* higher education providers have a [positive duty](#) to take proactive action to prevent discrimination and harm against employees from occurring in the first place. This requires providers to take ‘reasonable and proportionate measures’ to eliminate, as far as possible:

- discrimination on the grounds of sex in a work context
- sexual harassment in connection with work
- sex-based harassment in connection with work
- conduct creating a workplace environment that is hostile on the grounds of sex
- related acts of victimisation.

Under various state and territory work health and safety laws, providers have a primary duty to monitor workers’ health and conditions and manage health and safety risks. This includes eliminating or minimising psychosocial hazards at work, which include sexual harassment, violence and aggression.

Higher education providers must also register for the Gender Equality Reporting program if they are standalone organisations with 100 or more employees, or a corporate structure with 100 or more employees in total across all entities. Relevant providers must submit the following to the [Workplace Gender Equality Agency](#) annually:

- responses to an online questionnaire on the provider’s policies, strategies, and actions on gender equality
- information about workforce composition; salaries and remuneration; and employee appointments, promotions, resignations, and parental leave.

There is a range of supplementary material available to support providers in their compliance activities and promote best practice. This includes the Australian Human Rights Commission’s [Guidelines for Complying with the positive duty under the Sex Discrimination Act 1984](#); [TEQSA’s Guidance note on wellbeing and safety](#); and Universities Australia’s [Sexual Harm Response Guidelines](#) and [Primary Prevention of Sexual Harm in the University Sector – Good Practice Guide](#).



Regulation	Current regulatory scope and opportunities to complement the National Code
Higher Education Standards Framework (Threshold Standards) 2021	<p>Current scope</p> <ul style="list-style-type: none">• The Threshold Standards cover safety and wellbeing for students, but do not provide specific compliance requirements for preventing and responding to gender-based violence, including specifics on the nature and extent of support services.• Student accommodation providers are not subject to the Threshold Standards.• There is no requirement for providers to report publicly, regularly, consistently on gender-based violence incidents and responses to these incidents. <p>Opportunities</p> <ul style="list-style-type: none">• The National Code will create mandatory standards that support providers to effectively prevent and respond to incidents of gender-based violence, which will be administered by a new Unit in the department.• Consistent and transparent reporting and ongoing monitoring would also allow for identification of potential systemic issues related to broader governance and safety issues that would be considered by TEQSA in regulating against the Threshold Standards.• Reporting insights would inform best practice guidance and support sector capability.
Higher Education Support Act 2003, Higher Education Provider Guidelines 2023	<p>Current scope</p> <ul style="list-style-type: none">• The Act and Guidelines require providers to have grievance and review procedures in place for student complaints on academic and non-academic matters. However, they do not require specific information on the nature of grievance and review procedures in relation to gender-based violence nor require those procedures to be victim-centred and trauma-informed to reduce the likelihood of further harm. <p>Opportunities</p> <ul style="list-style-type: none">• The National Code would establish requirements and provide guidance on how to respond to incidents of gender-based violence, including complaints, investigations and grievances escalation.
Support for Students Policy (HESA 2003, s19-43)	<p>Current scope</p> <ul style="list-style-type: none">• The Support for Students Policy requires providers to have, comply with and report on a policy that supports students to successfully complete units of study in which they are enrolled. However, these requirements only apply to HESA-approved providers – not all TEQSA approved providers.• The guidelines recognise students may experience family and domestic violence, harassment, sexual harm but do not specifically include other forms of gender-based violence.



	<p>Opportunities</p> <ul style="list-style-type: none"> The National Code would specify standards for delivery of support services, including necessary expertise, related to gender-based violence and how support pathways are communicated to students.
<p>Higher Education Support (Student Services, Amenities, Representation and Advocacy) Guidelines 2022</p>	<p>Current scope</p> <ul style="list-style-type: none"> These Guidelines require higher education providers who charge a student services and amenities fee (SSAF) to publicly report on how allocations are spent. SSAF revenue can only be spent on a range of non-academic support services. However, it does not prescribe support the kinds of support required for victims of gender-based violence. <p>Opportunities</p> <ul style="list-style-type: none"> The National Code would specify requirements for delivery of support services related to gender-based violence and how support pathways are communicated to students.
<p>The National Code of Practice for Providers of Education and Training to Overseas Students 2018</p>	<p>Current scope</p> <ul style="list-style-type: none"> This code focuses solely on the delivery of education to overseas students. Similar to the Threshold Standards, it outlines minimum standards for providers to ensure safe environments for students. <p>Opportunities</p> <ul style="list-style-type: none"> The National Code would specify requirements for targeted gender-based violence policies, procedures and support services for domestic and overseas students, staff and student accommodation providers owned and/or operated by a registered higher education provider.
<p>Sex Discrimination Act 1984 - Positive duty requirements / Fair Work Act 2009</p>	<p>Current scope</p> <ul style="list-style-type: none"> Requires employers to take ‘reasonable and proportionate measures’ to eliminate and prevent: discrimination on the grounds of sex in a work context; sexual harassment in connection with work; sex-based harassment in connection with work; conduct creating a workplace environment that is hostile on the grounds of sex; related acts of victimisation. Applies to employees/staff but does not apply to students. <p>Opportunities</p> <ul style="list-style-type: none"> The Code would be designed to address all forms of gender-based violence. The Code would set expectations and build the evidence base for prevention programs, training and education for providers that cover the drivers of gender-based violence. The Code will require embedding a whole-of-institution approach to gender-based violence, extending beyond positive duty obligations and extending to students.
<p>Work health and safety laws</p>	<p>Current scope</p>



- Providers have a primary duty to monitor workers' health and conditions and manage health and safety risks. This includes eliminating or minimising psychosocial hazards at work, which include sexual harassment, violence and aggression.
- Guidelines do not always provide specific guidance on how to achieve compliance with the WHS Duty.

Opportunities

- The Code would support providers to demonstrate how they are actively discharging their WHS duty to eliminate risks to workers' safety by requiring implementation of a whole-of-organisation approach to preventing and responding to gender-based violence.

**Workplace Gender
Equality Agency
reporting requirements**

Current scope

- Requires providers to register for the Gender Equality Program if they are standalone organisations with 100 or more employees, or a corporate structure with 100 or more employees in total across all entities.
- Reporting is focused on gender equality and equity (which can include harassment and discrimination).
- Reporting does not relate to students, student complaints, disclosures of gender-based violence or related incident rates.
- Does not apply to all registered higher education providers.

Opportunities

- The Code could require reporting on disclosures/reports of gender-based violence, investigations and their outcomes / organisational actions and other relevant data.