

Consultation: Draft Action Plan Addressing Gender-Based Violence in Higher Education and the National Student Ombudsman.

Full Stop Australia Submission, 31 January 2024



Full Stop Australia acknowledges the Traditional Custodians of Country throughout Australia, and their continuing connection to land, sea and community. We pay our respects to them, their cultures and their Elders past and present.

About this submission

Full Stop Australia thanks the Australian Government for giving us the opportunity to comment on the *Draft Action Plan for Addressing Gender-Based Violence in Higher Education* (**Draft Action Plan**) and the design of a National Student Ombudsman (**NSO**).

This submission was prepared by Taran Buckby, Legal Policy Officer, and Emily Dale, Head of Advocacy. If you have any questions in relation to this submission, please do not hesitate to contact Emily Dale at emilyd@fullstop.org.au.

This submission uses the term *sexual violence* as a broad descriptor for any unwanted acts of a sexual nature perpetrated by one or more persons against another. This term is used to emphasise the violent nature of all sexual offences and is not limited to those offences that involve physical force and/or injury.

About Full Stop Australia

Full Stop Australia is a nationally focused not-for-profit organisation, which has been working in the field of sexual, domestic, and family violence since 1971. We perform the following functions:

- Provide expert and confidential telephone, online and face-to-face counselling to people of all genders who have experienced sexual, domestic, or family violence, and specialist help for their supporters and those experiencing vicarious trauma
- Conduct best practice training and professional services to support frontline workers, government, the corporate and not-for-profit sector
- Advocate to governments and in the media for laws and systems that better respond to, and ultimately prevent, gender-based violence.

Our advocacy draws upon the expertise of our trauma-specialist counsellors, who support people impacted by sexual, domestic and family violence across the country. It also draws on the lived expertise of our clients and survivor-advocates in our National Survivor Advocate Program.

Full Stop Australia supports the Draft Action Plan

Full Stop Australia supports the Draft Action Plan. We congratulate the Government on the development of a Plan with the potential to create transformative change for student safety. The current prevalence of sexual violence at Australian universities, and the institutional barriers victim-survivors face seeking support and action, point to deep cultural problems and a dearth of safe and appropriate processes for addressing sexual violence.

We welcome the Draft Action Plan as a mechanism to address these issues, by delivering:

Full Stop Australia is working to put a full stop to sexual, domestic, and family violence through **support, education, and advocacy.**

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- **Clear standards for addressing sexual violence.** We support the introduction of a new *National Higher Education Code to Prevent and Respond to Gender-based Violence (National Code)*, which would create rules for all universities in relation to embedding evidence-based primary prevention activities and respectful relationships education, addressing reports of sexual violence, governance arrangements, and considering diverse and intersectional student and staff needs, among other things.
- **An avenue for complaints for victim-survivors of sexual violence.** We strongly support the establishment of a National Student Ombudsman (NSO), with investigative and dispute resolution powers, to create a complaints mechanism for students not satisfied with their university's response to sexual violence. Leaving universities to respond to sexual violence on their own, with no overarching complaints mechanism, is not working. There is inadequate transparency — with “less than a quarter of Australia’s 39 universities publishing information on their websites about sexual violence reports and disclosures or disciplinary actions”¹ and generally poor processes for handling sexual violence. The 2021 National Student Safety Survey finding that 43.7% of students who formally reported sexual assault to their university said the university had not explained its reporting or complaint process to them² highlights this lack of transparency. We hope the NSO creates the kind of oversight that is badly needed to address sexual violence in university settings. We have commented more fully on the NSO below.
- **Oversight of student accommodation providers.** We strongly support student accommodation providers being subject to relevant sections of the National Code. This is particularly important given the rates of sexual violence committed and experienced at university housing. We also support the requirement that student accommodation providers align their approach to sexual violence with those universities whose students they house so that students are not required to tell multiple providers about a traumatic experience, and that student safety and support needs are aligned and integrated.

¹ According to the PhD research of Australian Human Rights Institute fellow, Dr Allison Henry. Cited in Precel, Nicole, 'Three-quarters of universities aren't being transparent about sexual violence,' *Sydney Morning Herald*, 9 July 2023, available at:

<https://www.smh.com.au/education/three-quarters-of-universities-aren-t-being-transparent-about-sexual-violence-20230706-p5dm4t.html?btis=>.

² Heywood, W., Myers, P., Powell, A., Meikle, G., & Nguyen, D. (2022). National Student Safety Survey: Report on the prevalence of sexual harassment and sexual assault among university students in 2021. Melbourne: The Social Research Centre.

- **Increased transparency and accountability.** We support the arrangements in the National Code in relation to disclosures, satisfaction with reporting pathways, provider and sector performance, and outcomes being the subject of regular reporting to Parliament. We also support the requirement that the NSO must report annually to Parliament.

Full Stop Australia is supportive of the Plan being finalised and commencing operation in a timely manner, noting that sexual violence at Australian universities is currently at crisis point. The 2021 National Student Safety Survey found that 1 in 6 university students had experienced sexual harassment, and that 1 in 20 had experienced sexual assault in a university context.³ These statistics show that change cannot be delayed.

Design of the NSO and requirement for universities to direct students to the NSO

The Draft Action Plan notes that the NSO will be designed “in consultation [between the Commonwealth government and] the States and Territories.” Full Stop Australia asks to be included in consultation on the design of the NSO, along with other experts in the sector.

In the meantime, we make the following recommendations in relation to the NSO, based on the high-level information available about it in the Draft Action Plan:

- All NSO staff should receive training on trauma-informed responses and be specialists in the dynamics and drivers of gender-based violence.
- The NSO should be required to handle complaints within set timeframes, to avoid administrative delay that has been shown to prolong victim-survivors’ experience of trauma and hinder their recovery.
- All NSO decisions should be reviewable. The review mechanism for NSO decisions should be trauma-informed and, as much as possible, not require students to repeat their experience of sexual violence. We note that there is precedent for Ombudsman decisions being reviewable — for example, some decisions of the NSW Ombudsman may be subject to a review process.⁴ The process for seeking review of an NSO decision must be clear and transparent to students.
- When students make a complaint to the NSO regarding sexual violence — be it via an online form, telephone or in person — there should be an established process for referring them to counselling and other services to support their recovery.

³ Ibid.

⁴ NSW Ombudsman, *Review of Ombudsman decisions about complaints*, 26 October 2020, available at: https://www.ombo.nsw.gov.au/__data/assets/pdf_file/0003/136992/Request-for-a-review-of-a-decision-policy.pdf.

- Prior to engaging with an educational institution to investigate a student complaint, the NSO should be required to obtain the relevant student's consent to disclose information about the complaint.
- Students should be able to request that their identity not be revealed to the relevant university during an NSO investigation. If this is requested, the NSO should be required to keep the student's identity confidential.
- Students should be able to withdraw a complaint to the NSO at any time after it is made.
- While it would not help their specific situation, students should be able to lodge complaints anonymously, to assist the NSO to identify systemic or institutional areas of concern. This would inform the NSO's annual reporting to Parliament.
- The NSO should be able to consider and make determinations on historical allegations of sexual violence. To this end, the NSO complaints mechanism should be open to students who experienced violence prior to the formation of the NSO, and students who did not immediately report an experience of sexual violence. This approach recognises that many victim-survivors, due to a range of barriers, delay reporting sexual violence. It also provides equal access to students who experienced sexual violence before the formation of the NSO.
- People who witness sexual violence, but are not directly affected by it, should be able to report to the NSO, and the NSO should be required to consider such reports and investigate where required. This could operate similarly to the Fair Work Ombudsman's processes for workplace investigations⁵ or anonymous tip-offs.⁶ Relevant investigations should not identify a victim-survivor unless their consent has been explicitly provided, to prioritise victim-survivor agency and safety. Even if an investigation is not able to be undertaken (because the relevant victim-survivor does not consent, or for other reasons), enabling bystanders to report to the NSO would increase transparency and accountability, by allowing the NSO to identify systemic issues and include information about this in its reporting to Parliament.

Finally, there should be a requirement for universities to inform students of their right to make a complaint to the NSO in all instances of sexual violence. The 2021 National Student Safety Survey found a systemic lack of understanding among university students regarding university support and reporting channels — with over half of students responding that they knew nothing or very little about the formal reporting process for either harassment or assault, and just under half of students responding they knew very little about where to seek support or assistance for harassment or

⁵ Fair Work Ombudsman, *Workplace investigations*, available at: <https://www.fairwork.gov.au/about-us/compliance-and-enforcement/workplace-investigations>.

⁶ Fair Work Ombudsman, *Send us an anonymous tip-off*, available at: <https://www.fairwork.gov.au/workplace-problems/send-us-an-anonymous-tip-off>.

assault.⁷ This points to systemic failings in the way universities communicate reporting and support mechanisms for sexual violence to students. It is critical that these same issues do not undermine the effectiveness of the NSO.

Full Stop Australia requests to be consulted on the National Code

Full Stop Australia understands that the Government is planning to conduct detailed consultation on the National Code. We request the opportunity to be included in this consultation process, to inform the minimum standards universities should have to meet in relation to their primary prevention of, and responses to, sexual violence.

Ongoing monitoring of student safety and university oversight initiatives

Finally, we wish to emphasise that — while the Draft Action Plan, NSO and National Code have the potential to create transformative change — these initiatives are just the starting point for progress. The task of making students safe from sexual violence at university is far from done. It is therefore critical that these mechanisms, and the state of student safety, are subject to review and oversight. To this end:

- Full Stop Australia supports the process of ongoing consultation, coordination, and review of progress against the Action Plan, outlined in Item 7 of the Plan.
- Full Stop Australia supports the operation of the NSO being the subject of an annual report to Parliament, which covers the numbers and types of complaints, the actions of providers in response to recommendations, and wider opportunities to improve student experience.
- Full Stop Australia welcomes a new National Student Safety Survey being completed this year. We understand that Universities Australia has committed to this after significant advocacy from the sector. We support conducting National Student Safety Surveys at three-yearly intervals — in accordance with the Australian Human Rights Commission’s recommendation in its 2017 report, *Change the Course: National Report on Sexual Assault and Sexual Harassment at Australian Universities*—to “track progress in reducing the prevalence of [sexual violence] at a sector-wide level.”⁸
- Full Stop Australia recommends that the National Code should be the subject of a periodic review process. We think it is important to track the impact of the Code, assess what is working well and what could be improved.

⁷ Heywood et al, above n 2.

⁸ See Recommendation 8, Australian Human Rights Commission, *Change the Course: National Report on Sexual Assault and Sexual Harassment at Australian Universities*, 2017.