

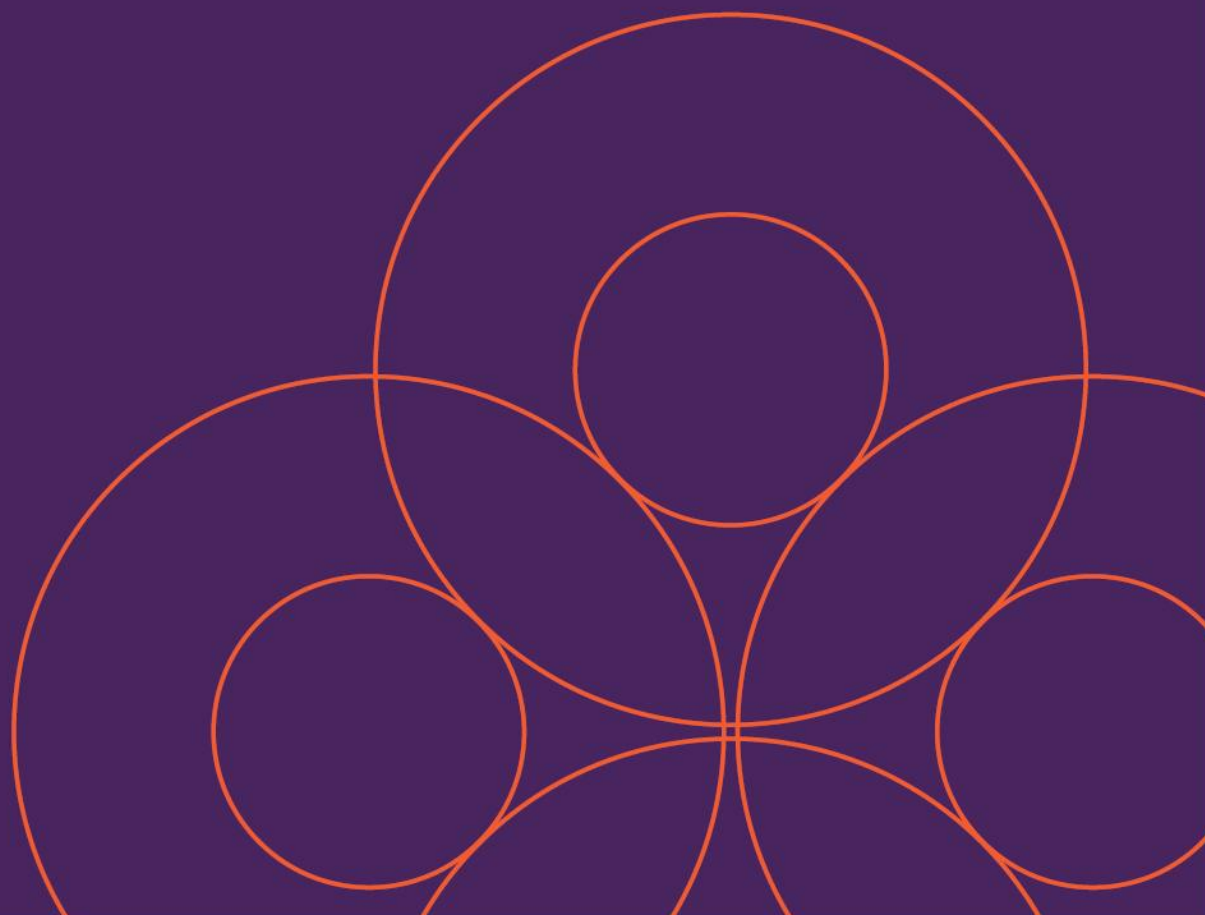


Australian Government

Higher Education
Gender-based
Violence Regulator

Statement of Regulatory Expectations

Confidentiality, non-disclosure
agreements and compliance with
the National Code





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The document must be attributed as the *Higher Education Gender-based Violence Regulator Statement of Regulatory Expectations: Confidentiality, non-disclosure agreements and compliance with the National Code*.

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Statement of Regulatory Expectations

The Higher Education Gender-based Violence Regulator (GBV Regulator) issues this Statement of Regulatory Expectations to clarify its expectations under the *National Higher Education Code to Prevent and Respond to Gender-based Violence* (National Code) in relation to the use of confidentiality and of non-disclosure agreements when responding to gender-based violence (GBV).

Through the GBV Regulator's recent work with the sector, and close engagement with the National Student Ombudsman (NSO) and the Tertiary Education Quality and Standards Agency (TEQSA), the GBV Regulator has identified important opportunities to strengthen higher education providers' (providers) complaints handling and use of confidentiality when responding to GBV.

Recent publications by the TEQSA, including its [*Statement of Regulatory Expectations: Student grievance and complaints mechanism*](#) (October 2025), and the National Student Ombudsman (NSO) report [*'Can I talk about this?'*](#) (March 2026), have identified ongoing issues in complaints handling across the higher education sector broadly, including in matters relating to GBV.

This statement builds on those publications, which emphasise that complaints handling should be trauma-informed and person-centred. It does so by clarifying the GBV Regulator's expectations under the National Code as they apply specifically to responses to disclosures of GBV (rather than complaints handling more broadly), including expectations relating to:

- complaints handling processes
- the use of confidentiality practices
- the use of non-disclosure agreements (NDAs)

The National Code establishes requirements for how providers must respond to disclosures and formal reports of GBV in relation to confidentiality practices and NDAs. Providers should note that confidentiality practices and NDAs may engage the National Code requirements broadly as part of their framework for preventing and responding to GBV, particularly those relating to support, safe processes, procedural fairness, transparency, trauma-informed practice and institutional accountability. The primary requirements engaged include:

Standard 2: Safe environments and systems

- Providers have a clear, publicly available and trauma-informed gender-based violence policy that sets out available supports and prohibits non-disclosure agreements unless requested by the discloser (Standards 2.3 and 2.8).

Standard 4: Safety and support

- Providers responses to gender-based violence are safe, person-centred and trauma-informed, they provide or facilitate access to appropriate support services and providers actively promote clear, accessible information about relevant policies, procedures and supports in formats that reflect the diversity of their student and staff communities (Standards 4.1 and 4.3).

Standard 5: Safe processes

- Providers are procedurally fair when responding to disclosures and reports of gender-based violence and support engagement by all parties, including enabling parties to have a support person present when participating in discussions or processes related to a disclosure or formal report (Standard 5.11).

In practice, providers will often become aware of GBV through their student or staff grievance and complaints mechanisms, including when a person chooses to make a formal report. Regardless of whether a provider responds through its complaints handling framework or through a separate GBV process, the response must meet the requirements of the National Code. This statement should inform the actions that providers take to assure themselves that they are meeting their obligations under the National Code.

This statement is structured into two parts:

- [*Part 1: Considerations shaping regulatory expectations*](#) provides the background, rationale and context for the expectations set out below, supporting consistent understanding and application across the sector. Collectively, they explain the basis of the GBV Regulator's approach and clarify how these expectations are to be interpreted and applied in practice.
- [*Part 2: The GBV Regulator's regulatory expectations*](#) articulates the practices the GBV Regulator expects providers to adopt when complying with the National Code. They reflect the GBV Regulator's interpretation of legislative and regulatory requirements, and outline the practices and outcomes expected of providers.

Part 1: Considerations shaping regulatory expectations

The GBV Regulator expects that provider's policies and procedures in relation to GBV are clear, consistent, trauma-informed and meet requirements of the National Code, with particular reference to Standard 3, 4 and 5.

Confidentiality practices and the National Code

The National Code does not prohibit the use of confidentiality practices, and appropriately applied, confidentiality protects privacy, dignity and safety while supporting procedural fairness for all parties. When applied in a trauma-informed way, it can empower individuals to exercise choice and control, while still enabling access to support, transparency and accountability.

While the National Code does not prohibit the use of confidentiality practices it sets out two key requirements that providers must meet:

1. Requirements for provider responses to GBV disclosures and formal reports
2. Prohibiting the use of NDAs unless it is expressly requested by the discloser

Responding to disclosures and formal reports of GBV

The National Code [establishes requirements](#) for how providers must respond to disclosures and formal reports of GBV, including that responses are trauma-informed, person-centred, procedurally fair and prioritise safety. Providers will often become aware of GBV through student or staff grievance and complaints mechanisms, and confidentiality is commonly applied through these processes. Providers must ensure that any response to GBV, and any confidentiality practices applied, comply with the National Code whether the matter is managed under complaints handling arrangements, a dedicated GBV process, or a combination of both.

When confidentiality practices do not meet these requirements, or are applied too broadly or without clear explanation, they can silence disclosers, increase distress, limit access to support, and undermine trust in providers. Providers should also be alert to the risk that confidentiality requirements with these effects may, in substance, operate as an NDA. Any confidentiality agreement or NDA must not restrict a person from speaking about their lived experience and seeking support, advice or justice.

Prohibiting the use of an NDA unless it is expressly requested by the discloser

An NDA, which is a form of a confidentiality agreement and can sometimes be used interchangeably as a confidentiality agreement, is a legal instrument commonly used to control the sharing of information, including in settlements and dispute resolution. There is extensive evidence that NDAs have also been used in GBV matters, particularly sexual violence and sexual harassment, in ways that silence victim-survivors, discourage help-seeking, and cause significant harm. For this reason, Standard 2.8 of the National Code prohibits the use of NDAs unless they are expressly requested by the discloser.

Where providers ensure that confidentiality practices align with the National Code, particularly by being trauma-informed, person-centred and procedurally fair, confidentiality can support safety, dignity and privacy and form a constructive part of the provider's response to disclosures of gender-based violence.

The GBV Regulator recognises that providers will meet these expectations in different ways depending on their student and staff cohort, operating environment, and the various legislative requirements under which they operate.

Part 2: The GBV Regulator's regulatory expectations

The GBV Regulator's regulatory expectations set out the approaches and practices providers are expected to adopt when complying with the National Code in relation to confidentiality practices and NDAs. They clarify how the GBV Regulator interprets the relevant standards, and the outcomes providers are expected to achieve to support transparent, trauma-informed and person-centred responses to GBV.

These expectations have been developed through detailed research, analysis and consultation, and draw on contemporary evidence, trauma-informed practice, specialist guidance, and engagement with relevant organisations, peak bodies and government agencies. They are intended to support practical implementation of the National Code. They do not create additional obligations, but provide guidance on the standards, behaviours and practices the GBV Regulator considers consistent with effective compliance, including lawful, transparent and trauma-informed responses that support reporting, help-seeking and access to support and justice.

Transparency and trauma-informed confidentiality practices

- 1) Providers must publish and maintain clear, accessible GBV-related policies and procedures ensuring they are:
 - a) Publicly available.
 - b) Written in plain English (with the ability to be translated).
 - c) Apply to both students and staff.
 - d) Accessible to students and staff with diverse needs.
- 2) Where a provider chooses to use confidentiality in any of their GBV-related policies or procedures, the provider must ensure they:
 - a) Clearly articulate the purpose of confidentiality and why it is necessary.
 - b) Clearly define what information is confidential and what is not, including when confidentiality begins and ends. This definition must note that confidentiality ceases at the end of each process. Each process that applies to confidentiality should be clearly defined.
 - c) Specify who confidentiality applies to, who information may be shared with, and all exceptions to confidentiality.
 - d) Clearly distinguish process confidentiality (e.g. protecting the integrity of an investigation) from any restriction on discussing lived experience, noting that confidentiality must never be used to limit a discloser's right to seek support.
 - e) Explain confidentiality obligations in a trauma-informed way, emphasising protection, choice and safety rather than restriction.
 - f) Be provided to all parties at the commencement of any process, accompanied by a clear explanation of their purpose, scope and exceptions, including explicit advice that students and staff are not required to treat their experience of GBV as confidential and can share their experience for the purpose of seeking support and advice.
 - g) Be drafted in plain English and made publicly available.

Student and staff rights to access support

- 3) Providers must not restrict or discourage disclosers from speaking with family members, friends, or trusted individuals about their experience of GBV.
- 4) Providers must not prevent or impede disclosers from seeking or accessing support, including (but not limited to) psychosocial support, legal advice, advocacy services, or external complaint, or external reviews.
- 5) Providers must ensure that no policy, procedure, or operational practice restricts access to support services, or restricts the type of support a discloser may choose to engage.

Prohibition on the use of non-disclosure agreements

- 6) Providers must not use NDAs in GBV matters, except where an NDA is explicitly and voluntarily requested by the discloser.
- 7) Providers must not apply pressure, explicitly or implicitly, on a discloser to enter an NDA, and must not represent or imply that access to support, remedies, or resolution is contingent on agreeing to an NDA.
- 8) Providers must ensure that any confidentiality policies, clauses or procedures they adopt do not require a discloser to keep their experience of GBV as confidential and are lawful in their entirety.
- 9) When an NDA is requested by the discloser and is to be used it must not:
 - a) Stop the discloser from sharing their experience of GBV for the purpose of seeking support or advice.
 - b) Prevent the provider from complying with their reporting obligations under the National Code.

Staff capability, training and conduct

- 10) Providers must ensure that all relevant staff, particularly frontline advisors, complaint handlers, legal and governance teams, student conduct staff, and senior decision-makers, understand the requirements of the National Code.
- 11) Providers must provide training to ensure staff understand the purpose, scope and limitations of any confidentiality practices the provider adopts, including all exceptions.
- 12) Providers must ensure that staff do not suggest, imply, or apply confidentiality in ways that deter or inhibit students or staff from seeking external support, legal advice, or review.
- 13) Providers must actively prevent indirect silencing, including through warnings about institutional reputation, ambiguous or overly broad confidentiality instructions, or language that could reasonably be interpreted as discouraging disclosure or complaint.

Governance and continuous improvement

- 14) Providers must regularly review all GBV-related policies, procedures and practices, including any confidentiality practices, to ensure compliance with the National Code and that they are procedurally fair, trauma-informed, and person-centred.
- 15) In conducting reviews, providers must ensure that no policy, procedure, or practice could reasonably be interpreted as silencing complainants, deterring reporting, or restricting access to justice.
- 16) Providers must maintain systems to monitor, review, and report on GBV disclosures and formal reports in accordance with National Code requirements.
- 17) Governing bodies must assure themselves that confidentiality practices, complaint mechanisms, and responses to GBV are lawful, trauma-informed, and compliant with regulatory expectations.
- 18) Providers must monitor and document any improvements made in response to NSO findings and recommendations from the NSO's *'Can I talk about this?'* report and make this information available to the GBV Regulator upon request.

Conclusion

The GBV Regulator expects all providers to immediately review, and if necessary, amend their complaints handling processes and any confidentiality practices in relation to GBV, to ensure full compliance with the National Code. Policies and procedures must prioritise student and staff safety, trauma-informed approaches and transparency.

The GBV Regulator assess non-compliance using its risk-based framework, considering both the harm or risk of harm to students and staff and the provider's culpability or commitment to compliance. Enforcement action will be determined case-by-case in line with the GBV Regulator's [Compliance and Enforcement Policy](#) and regulatory principles.