Peer-Reviewed Paper

From Policy Gaps to Regulatory Governance: Australia's National Code on Gender-based Violence in Comparative Perspective

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Abstract

Gender-based violence (GBV) remains a pervasive issue in higher education globally, with significant evidence of institutional failure to respond adequately to student disclosures. In Australia, the National Higher Education Code to Prevent and Respond to Gender-based Violence (the National Code) marks a shift toward a legally binding and enforceable regulatory framework. This article conducts a comparative policy analysis of the Australian National Code alongside regulatory models in Canada, the United Kingdom, and the United States, examining how each of these jurisdictions has attempted to address the institutional dimensions of GBV in higher education. Drawing on regulatory governance theory and legal pluralism, the analysis assesses how GBV interventions operate not only as legal instruments but also as tools of normative change within higher education systems. The article argues that while Australia's National Code introduces a promising model for systemic accountability, its long-term success depends on investment in initiatives that address the structural drivers of gender-based violence across the broader Australian community.

Keywords

Gender-based violence (GBV); Higher education regulation; Responsive regulation; Sexual harassment and assault; Institutional accountability; Campus safety.

Introduction

Gender-based violence (GBV) within higher education is a ubiquitous issue that is not confined to national boundaries or institutional types. Defined broadly to encompass sexual assault, harassment, coercive control, economic harm, and other forms of violence grounded in gendered power imbalances, GBV disproportionately affects women, gender-diverse individuals, people with disabilities, and those from marginalised groups (Hearn et al., 2025). Despite decades of advocacy and reform efforts, higher education providers have often failed to implement consistent, victim-survivor-centred responses to this endemic problem.

Empirical data from two major national studies, the Australian Human Rights Commission's *Change the Course* report (2017) and the 2021 National Student Safety Survey (Heywood et al., 2022; the NSSS), highlight the prevalent nature of sexual harassment and assault in Australian universities. In 2016, over half (51%) of university students reported experiencing sexual harassment, and 6.9% reported sexual assault in 2015 or 2016, with 1.6% indicating that the assault occurred in a university setting (Australian Human Rights Commission [AHRC], 2017). The NSSS reinforced these concerns, revealing that one in six students experienced sexual harassment and one in 20 reported sexual assault since commencing university (Heywood et al., 2022, p. 1).

These harms are unevenly distributed across student populations. Gender-diverse students, particularly non-binary (22.4%) and transgender students (14.7%), reported significantly higher rates of sexual harassment (Heywood et al., 2022, p. 1), followed by female (10.5%) and male students (3.9%) (Heywood et al., 2022, p. 19). Similar patterns emerged in sexual assault data, with transgender (3.2%) and non-binary students (2.2%) again facing the highest risks (Heywood et al., 2022, Snapshot section). Age emerged as a significant correlate, with students aged 18–21 showing the highest rates of recent sexual harm (Heywood et al., 2022, p. 1). Students with disabilities were also disproportionately affected, experiencing substantially higher rates of harassment (13.7%) and assault (2.4%) than their non-disabled peers (Heywood et al., 2022, p. 1).

These patterns of harm must be understood within the context of shifting university demographics. Over the past several decades, the gender composition of higher education in English-speaking countries has changed significantly. For instance, women now comprise approximately 57% of United States (U.S.) college enrolments, a reversal of the male-dominated ratios seen in the 1970s (Hanson, 2025). Similar trends are evident in Australia and the United Kingdom (UK). Alongside this, the internationalisation of higher education has brought together students from a wide range of cultural and linguistic backgrounds, further diversifying student cohorts. The growth of online and distance education has also reshaped the spatial and relational dynamics of student life. These demographic and structural shifts intersect with contemporary cultural movements such as #MeToo and the rise of masculinist subcultures like the "manosphere". Collectively, these developments create a complex and evolving terrain for GBV prevention and response in higher education, requiring regulatory frameworks to be not only institutionally robust but also socially and culturally attuned.

Further, postgraduate students reported elevated experiences of harassment, particularly in professional placement contexts and in interactions with university administrative systems (Heywood et al., 2022, p. 2). These findings point to the structural and intersectional nature of sexual harm in tertiary settings.

The NSSS also revealed that incidents of sexual harassment and assault most frequently occur in on-campus locations such as lecture theatres, computer labs, libraries, and general campus spaces (Heywood et al., 2022, p. 2). High-risk settings also include student accommodation and university-affiliated social events, particularly those hosted by clubs and societies. Postgraduate students are more likely to experience sexual harm in professional placements or through interactions with university administrative staff. Despite the prevalence of such incidents, formal reporting remains markedly low: only 3% of students who experienced sexual harassment and 5.6% of those who experienced sexual assault formally reported the incident to their institution. Of those who did report, less than one in five (18.9%) had their case referred to the police, suggesting limited integration between institutional responses and criminal justice processes (Heywood et al., 2022, pp. 2–3).

Students have expressed mixed satisfaction with institutional responses. While 41.3% of students who reported sexual harassment expressed satisfaction with their university's handling of the complaint, this figure dropped to 27.9% for sexual assault cases (Heywood et al., 2022, p. 3). These disparities raise concerns about the adequacy of institutional procedures and support mechanisms in responding to more severe forms of GBV. Further, the uptake of university-based support services remains low: only 16.8% of students who experienced sexual harassment and 25.5% of those who experienced sexual assault accessed counselling or related services (Heywood et al., 2022, p. 3).

These findings point to enduring barriers to reporting and institutional mistrust, which may inhibit victim-survivors from engaging with response mechanisms. These systemic failings have been conceptualised as a form of "institutional betrayal"; that is, where institutions that are entrusted with the welfare of individuals act, or fail to act, in ways that exacerbate harm (Smith & Freyd, 2014). This betrayal is particularly relevant in the university context, where reputation management and hierarchical governance structures can often undermine genuine efforts to address GBV (see, for example, Murray & Powell, 2009). Within this context, traditional approaches to campus safety have come under increasing scrutiny for being inconsistent, opaque, and insufficiently enforceable.

In an attempt to respond to these systemic gaps, the Australian Government introduced and enacted the *Universities Accord (National Higher Education Code to Prevent and Respond to Gender-based Violence) Act 2025* (Cth). The Act represents a significant shift in the regulatory landscape by mandating compliance with a comprehensive *National Higher Education Code to Prevent and Respond to Gender-based Violence* (Department of Education, 2025; the National Code). The National Code articulates seven enforceable standards that apply across governance, prevention, response, and support domains, and is underpinned by a ministerially administered regulatory regime. It establishes powers for monitoring, investigation, and enforcement, including civil penalties, marking a departure from the largely self-regulatory approaches of the past.

This article undertakes a comparative analysis of the National Code, comparing and contrasting it with regulatory frameworks in Canada, the UK, and the U.S. These jurisdictions have all attempted, to varying degrees, to address the institutional dimensions of GBV in higher education, offering points of comparison regarding policy design, implementation, and outcomes. They also serve as instructive comparators due to their broadly comparable higher education sectors and histories of public scrutiny and reform around GBV.

To frame this analysis, the article draws on responsive regulation theory. According to Ayres and Braithwaite (1992), responsive regulation consists of a grading scale of interventions, where regulators begin with persuasion and escalate to punitive measures only when necessary. The emphasis is on building trust and legitimacy while maintaining the capacity to enforce compliance as needed. This analytical framework is supported by Black's (2001) risk-based regulation and legal pluralism, which highlights the coexistence and, at times, divergence of normative orders within complex institutional environments. This analytical lens facilitates a critical assessment of how regulatory interventions operate not only as legal instruments but also as tools of normative change within higher education systems.

This article begins by outlining the methodological approach adopted for the analysis. It then explores the distinctive features of Australia's National Code to prevent and respond to GBV. A comparative examination of regulatory frameworks from those jurisdictions identified above follows, with particular emphasis on how different jurisdictions navigate the tensions between institutional accountability, victim-survivor-centred justice, and procedural fairness. The article concludes by distilling key insights from these comparative models to inform the future development, implementation, and refinement of Australia's regulatory approach. By situating Australia's reforms within a broader global context, it is hoped that the article contributes to the conditions under which GBV regulation can be both effective and just.

Method

This study adopts a qualitative, comparative policy analysis methodology to examine the regulatory architecture and the reasoning underpinning GBV frameworks in higher education across four national contexts: Australia, Canada (Ontario), the UK, and the U.S. Comparative policy analysis, as developed in the social sciences, offers a sound conceptual approach for exploring how different jurisdictions conceptualise and regulate complex social problems, particularly where governance, institutional autonomy, and human rights are in tension (de Wee, 2022).

The analysis draws primarily on publicly available legislation and policy documents. The core materials examined in this study include:

- The draft *National Higher Education Code to Prevent and Respond to Gender-based Violence*, along with its enabling legislation, Universities Accord (National Higher Education Code to Prevent and Respond to Gender-based Violence) Bill 2025 (Cth) and associated parliamentary Bills Digest;

- Ontario's Bill 132: Sexual Violence and Harassment Action Plan Act (2016), along with guidance and policy frameworks issued to post-secondary institutions under its provisions;
- The *Statement of Expectations for Preventing and Addressing Harassment and Sexual Misconduct* issued by the UK's Office for Students (Office for Students [OfS], 2021), as well as Universities UK's *Changing the Culture* report (2016); and
- The U.S. Title IX regime, particularly the 2011 and 2025 Dear Colleague Letters (official correspondence from committee member) issued by the Office for Civil Rights (OCR) under the Department of Education (United States Department of Education, Office for Civil Rights, 2011, 2025).

Documents were selected based on their connection to the policy problem, namely, the regulation of institutional responses to GBV in tertiary settings, and their formal or de facto status in shaping institutional obligations.

A thematic content analysis was conducted to compare how these regulatory regimes articulate and operationalise four key policy dimensions:

1. Institutional obligations and regulatory scope;
2. Enforcement mechanisms and compliance regimes;
3. Victim-survivor support and procedural transparency; and
4. Protection of rights for the accused or respondents/complainants.

This analytical framework was developed iteratively through close reading and coding of the texts, supported by a review of relevant secondary literature and policy commentaries. Coding was conducted manually and refined through comparison to identify convergences and divergences across the frameworks.

To contextualise the findings, the analysis was informed by two complementary theoretical lenses. First, responsive regulatory governance theory offers a conceptual scaffold for understanding how legal instruments, oversight bodies, and institutional actors interact to shape compliance cultures and regulatory effectiveness (Ayres & Braithwaite, 1992; Braithwaite et al., 2007). This approach is particularly useful for examining the power dynamics between central governments and autonomous educational institutions, as well as the mechanisms through which compliance is achieved.

Second, legal pluralism (Black, 2001) acknowledges the multiplicity of normative orders — legal, institutional, cultural, and informal — that coexist within a given regulatory field. This lens is especially pertinent in higher education contexts, where formal laws intersect with, for example, academic norms, media and reputational concerns, equity and inclusion discourses, and student-led advocacy.

It should be noted that the comparative approach employed here does not seek to rank national systems, suggesting some universal metric of effectiveness, but rather to illuminate the choices and trade-offs embedded in different regulatory strategies. By critically examining these dimensions, the study hopes to contribute to scholarly and policy debates about how best to design victim-survivor-centred and institutionally feasible responses to GBV in tertiary education.

Australia's National Code: A new approach to regulation

"The Code will be made by the Minister as a legislative instrument, and it will set out best practice requirements that all higher education providers will be required to meet."

(Clare, 2025, paras. 18–19)

The introduction of the National Code represents a significant shift in the country's regulatory approach to addressing GBV in tertiary education. Developed as part of the broader Australian Universities Accord reform process and legislated through the *Universities Accord (National Higher Education Code to Prevent and Respond to Gender-based Violence) Act 2025* (Cth), the National Code seeks to standardise and enforce institutional responses to GBV through a detailed and binding framework. The National Code's development is underpinned by empirical evidence from multiple national inquiries and surveys, including the *Change the Course* report (AHRC, 2017), the NSSS, and recommendations from the *Australian Universities Accord Final Report* (Department of Education, 2023). These have all highlighted entrenched institutional failures to prevent and respond to gendered violence.

At the core of the National Code are seven enforceable standards, covering the domains of leadership and governance (Standard 1), environmental and systemic safety (Standard 2), capability building (Standard 3), survivor support (Standard 4), complaint procedures (Standard 5), data and evidence-based practice (Standard 6), and student accommodation (Standard 7) (Crowe, 2025, p. 8). These standards collectively articulate a whole-of-institution approach to GBV, consistent with contemporary best practice in prevention-oriented public policy. Importantly, compliance with the National Code is not optional; higher education providers are legally required to meet its obligations, with failure to do so potentially attracting civil penalties. A newly established specialist unit within the Department of Education has been vested with broad regulatory authority, including the issuance of civil penalties, compliance notices, infringement actions, and injunctive relief (Crowe, 2025, p. 3).

Several elements of the National Code are particularly notable for their regulatory ambition. For example, institutions must now require prospective employees, including senior leaders and members of governing bodies, to disclose prior investigation for GBV-related conduct or engagement in such behaviour, even where the allegations have not resulted in legal findings (Department of Education, 2025, para. 2.1(b)). These declarations are to be used in determining the individual's suitability for employment or promotion. The National Code also mandates the establishment of victim-survivor-centred pathways, including the option for anonymous disclosures. Institutions are required to investigate all formal reports where the respondent is a staff or student member, regardless of the context or location in which the GBV incident allegedly occurred (Department of Education, 2025, paras. 5.1–5.6). Further, the National Code adopts a systems-level framework, compelling providers to embed GBV prevention and response mechanisms into every facet of their operations, from internal governance and curriculum design to student housing and third-party contractual arrangements like professional placements (Department of Education, 2025, Standards 1 and 7).

From a regulatory governance perspective, this model exemplifies a shift from voluntary compliance (Scholz, 1984) and reputational incentives (Parella, 2017) toward rule-based regulation (Scott, 2002) anchored in enforceable obligations. This formalisation reflects what Levi-Faur (2013) describes as the "regulatory state" in action: a governance model increasingly reliant on legal instruments and supervisory bodies to enforce policy compliance. Within this model, the state no longer governs primarily through direct service provision or trust in professional discretion, but through codified standards and oversight mechanisms. In the context of higher education specifically, this marks a departure from collegial models of self-regulation toward more centralised, state-driven accountability regimes (Black, 2008; Levi-Faur, 2005).

However, the National Code has been subject to criticism. In its response to the draft framework, Universities Australia (2024) expressed concern over potential regulatory duplication, particularly between the Department of Education's new enforcement unit and the existing oversight role of the Tertiary Education Quality and Standards Agency (TEQSA) (Universities Australia, 2024). There are also operational concerns about regulatory burden, especially for smaller institutions with limited administrative capacity to implement and report on new procedures (Universities Australia, 2024). Further, the procedural fairness implications of vetting processes that require the disclosure of unproven allegations have been the subject of legal and ethical debate. Critics argue that such measures may contravene foundational principles of natural justice and privacy, raising questions about their compatibility with broader human rights norms (Crowe, 2025).

Through the legal pluralism lens (Black, 2001), the National Code can be seen as an attempt to impose a dominant legal order, one that privileges state-mandated protections for survivor safety over existing institutional, normative frameworks within universities. While this may generate coherence and accountability across the sector, it also risks marginalising the autonomy and professional discretion of higher education institutions, which have traditionally operated under more decentralised governance models.

Moreover, the National Code's holistic scope calls for substantial cultural and structural change, which cannot be fully achieved through compliance mechanisms alone. Enduring change requires not just regulatory imposition but also co-designed, community-driven approaches that shift campus culture toward gender equity and inclusivity.

Australia's National Code represents an assertive use of legal regulation in the higher education context. It signals a move away from fragmented and discretionary institutional practices toward a harmonised and enforceable framework for addressing GBV. However, its long-term efficacy will depend on appropriate implementation support and its integration within a broader ecosystem of gender equality. Specifically, the National Code must be complemented by a whole-of-community approach that embeds GBV prevention and respectful relationships education before students enter tertiary settings. Effective prevention cannot begin at the university gates; it must be cultivated during secondary schooling and reinforced through coordinated initiatives across policy and public domains. Without this upstream focus, regulatory efforts risk addressing only the symptoms of GBV, rather than its root causes.

International comparisons

Internationally, higher education systems have developed a diverse range of regulatory approaches to address GBV. Each of them reflects distinct political contexts and institutional cultures. While most jurisdictions recognise the need for institutional responsibility in preventing and responding to GBV, the degree of oversight and enforcement varies significantly. This section examines three illustrative case studies — Canada (Ontario), the UK, and the U.S. — to compare how different jurisdictions conceptualise regulatory responses and institutional accountability about campus-based GBV. These comparisons highlight the balance each system attempts to strike between compliance-based regulation and institutional autonomy.

Canada: Ontario's Bill 132 and the policy-based approach

Ontario's Sexual Violence and Harassment Action Plan Act (2016), colloquially known as Bill 132, mandates all publicly assisted post-secondary institutions to adopt standalone sexual violence policies. These policies must be developed and co-designed with students, include procedures for reporting and responding to sexual violence, and undergo evaluation at least every three years. Institutions are also required to publicly report anonymised data on disclosures and complaints, as well as the supports available to survivors.

Despite these obligations, Bill 132 adopts a policy-oriented rather than enforcement-centric regulatory position. It reflects a soft law approach in which institutions are expected to demonstrate responsiveness through transparent governance and procedural compliance, but without the imposition of binding sanctions for non-compliance. There is no designated regulatory agency with coercive authority (Braithwaite, 2009) akin to Australia's Department of Education unit, and implementation is monitored primarily through public reporting and ministerial review of institutional compliance statements.

The decentralised nature of this model aligns with Canadian federalism and the constitutional primacy of provinces over education. However, this approach has led to significant institutional variation in the design and enforcement of campus sexual violence policies. While some universities have adopted trauma-informed, survivor-led strategies, others have faced criticism for performative compliance or insufficient implementation (Salvino, 2025). From a regulatory governance perspective, Ontario's model exemplifies the limits of minimal compliance mandates in the absence of robust oversight or sector-wide enforcement.

United Kingdom: Office for Students and reputational regulation

In the UK, regulation of GBV in higher education has evolved through a combination of sector-led initiatives and statutory guidance. In 2021, the Office for Students (OfS), the statutory regulator for higher education in England, released a *Statement of Expectations for Preventing and Addressing Harassment and Sexual Misconduct.* The expectations require institutions to adopt clear, accessible, and consistently applied policies; provide effective staff training; ensure timely and fair complaint handling; and collect and use data to inform ongoing improvements.

Crucially, the OfS expectations are non-binding and lack formal enforcement mechanisms. Rather than imposing legal obligations or penalties, the OfS relies on reputational regulation, whereby institutions are encouraged to comply through public scrutiny, sector benchmarking, and stakeholder pressure. This approach builds on the earlier *Changing the Culture* report by Universities UK (2016), which provided a blueprint for institutional reform but did not mandate specific actions.

The UK model thus exemplifies a form of meta-regulation, a strategy that seeks to steer institutional self-regulation without dictating specific rules (Braithwaite, 2005). It assumes that universities, as autonomous institutions, will respond to reputational incentives and sector expectations without requiring legal compulsion. However, this approach can have uneven effects, with some institutions investing meaningfully in culture change and others adopting minimal compliance practices. The absence of external enforcement may limit the consistency and depth of implementation across the sector.

United States: Title IX and the evolution of legal accountability

The U.S. presents a markedly different regulatory paradigm, grounded in civil rights legislation and shaped by decades of litigation and politicisation. Title IX of the Education Amendments of 1972 prohibits sex-based discrimination in any education program receiving federal funding. Under the regulatory interpretation advanced in the 2011 *Dear Colleague Letter* (United States Department of Education, Office for Civil Rights, 2011), the U.S. Department of Education's OCR directed post-secondary institutions to take affirmative steps to prevent and respond to sexual violence, including by implementing grievance procedures, conducting investigations, and offering supportive measures to survivors.

This guidance marked a significant expansion of institutional responsibility and was grounded in a compliance-based enforcement model, with the OCR empowered to investigate violations and withdraw federal funding in cases of non-compliance. However, the approach has been criticised for perceived overreach and insufficient procedural protections for accused students (Walker, 2025).

Subsequent reforms under the Trump administration's Education Secretary, Betsy DeVos, reversed many of these directives (Walker, 2025). The 2020 revisions to Title IX regulations significantly narrowed institutional liability for addressing sexual misconduct. Under the previous Obama-era guidance, reports made to virtually any university employee could trigger institutional obligations. In contrast, the new rules required that formal complaints be submitted directly to a Title IX coordinator or an official with the authority to take corrective action. Additionally, the standard shifted from institutions being responsible under "constructive notice" to requiring "actual knowledge" of incidents, with "deliberate indifference" set as the threshold for liability. These changes raised the bar for initiating investigations and reduced the scope of institutional accountability under Title IX (Walker, 2025). These changes shifted the regulatory emphasis from survivor protection to due process and legal defensibility, reflecting the contentious nature of Title IX.

Title IX represents a highly formalised and litigious regulatory regime, where institutions face legal liability both for failing to act and for allegedly violating the rights of respondents. From a legal pluralism standpoint, the U.S. model illustrates how overlapping legal norms, civil rights law, procedural fairness, and institutional autonomy can generate significant regulatory tension. It also demonstrates the risks of politicising regulatory frameworks for GBV, as shifts in administrative leadership can dramatically alter enforcement priorities and procedural requirements.

Comparative analysis: Lessons for Australia

Australia's National Code represents a marked shift in regulatory approach, particularly when situated within the global landscape of higher education governance. It marks a decisive departure from the fragmented and often inconsistent institutional responses that have characterised much of Australia's past handling of GBV (AHRC, 2017; Heywood et al., 2022). By embedding enforceable obligations in federal legislation and establishing a dedicated oversight unit within the Department of Education, the National Code introduces a hybrid regulatory model, combining *rights-based mandates* grounded in victim-survivor protection with *performance-based requirements* for institutional monitoring and reporting (Braithwaite et al., 2007; Levi-Faur, 2013). However, the strength of such a model lies not only in its legal authority but in its legitimacy and adaptability, qualities that require careful calibration of enforcement strategies, procedural safeguards, and stakeholder participation.

Enforcement and governance: Toward coercive regulation

Australia's National Code is unique in its use of legally enforceable standards and centralised enforcement architecture. The newly established regulatory unit has the authority to impose civil penalties, issue compliance notices, and pursue injunctive relief against non-compliant institutions (Crowe, 2025). This coercive capacity sharply distinguishes Australia from jurisdictions such as Canada and the UK, where regulatory frameworks rely more on institutional autonomy and moral persuasion.

Drawing on Levi-Faur's (2013) conceptualisation of the regulatory state, the Australian model reflects a deliberate shift from informal, reputation-based governance toward a formalised system of state-enforced compliance. While this promises clarity and sector-wide consistency, it also introduces risks of regulatory overreach, particularly if enforcement is perceived as disproportionate or duplicative, for example, with TEQSA's functions. Overly punitive responses can provoke institutional defensiveness, resulting in superficial compliance rather than meaningful transformation. Further, as Black (2001) argues through her lens of legal pluralism, universities operate within overlapping normative frameworks: legal, professional, ethical, and organisational. Regulatory legitimacy in such environments, therefore, depends on the regulator's ability to engage with these multiple domains.

While responsive regulation offers a compelling model for graduated intervention, its application to GBV in higher education is not without critique. Braithwaite (2014) himself cautions that staged compliance regimes may unintentionally encourage underreporting, especially if institutions perceive early-stage intervention as optional rather than obligatory. Critics argue that such models risk diluting the urgency of responding to GBV, treating it as a matter of regulatory calibration rather than immediate institutional obligation. Further, feminist and intersectional scholars have raised broader concerns about legal and regulatory responses to gendered violence. Goodmark (2021), for example, critiques the over-criminalisation of GBV interventions, which can sometimes penalise victim-survivors rather than support them. Reilly et al. (2021) underscore how GBV policies can marginalise migrant women, failing to account for intercultural and intersectional dynamics. Scholars such as Piedalue et al. (2020) highlight how legal framings that emphasise "social norms" or institutional compliance often obscure the deeper structural and political-economic drivers of violence, including inequalities in access to justice. These critiques suggest that while responsive regulation may be a necessary component of institutional accountability, it is not a sufficient condition for transformative change. Integrating critical policy perspectives and survivor-led frameworks is essential to ensuring that regulatory reform addresses not only procedural compliance but also substantive justice.

Procedural fairness: Balancing accountability with rights

One of the most controversial features of the National Code is its requirement for prospective employees and "other people engaged by providers" to disclose whether they have been the subject of prior GBV allegations, even if such claims were not formally substantiated (Standard 2.1(b)). While this provision seeks to address the well-documented issue of "pass-the-harasser" practices, where individuals accused of misconduct move between institutions without consequence (Fortney & Morris, 2021), it raises profound concerns about procedural fairness and employment rights of the applicant. An additional concern is the risk of perpetrator misidentification, particularly in the context of family violence. As Reeves (2021) illustrates, misidentification can arise in family violence cases due to the complexity of relational dynamics and trauma responses, and misapprehensions by first responders or the courts. Reeves's (2021) findings highlight the limitations of a one-size-fits-all regulatory response and underscore the need for safeguards, such as a right of review, to prevent unjust outcomes.

From a legal pluralist perspective, Australia's vetting provision may conflict with, or generate tension between, state regulatory objectives and professional norms such as academic freedom and employment law, particularly if implemented without clear guidelines or evidentiary thresholds. To safeguard legitimacy, the National Code must ensure that terms are carefully and clearly defined, particularly when they relate to procedural and evidentiary thresholds, and create redress mechanisms for those adversely affected by disclosures.

Victim-survivor-centred support: Toward integrated practice

All of the jurisdictions identified above share a normative commitment to victim-survivor-centred, trauma-informed support. However, the Australian National Code distinguishes itself through its institutional integration of these principles. For example, the National Code mandates anonymous reporting pathways, and the application of obligations across the whole-of-institution, including student accommodation and third-party arrangements (Standards 5, 6, 7). These features align with international best practices that recognise GBV as a systemic issue embedded in organisational culture and power structures (Fu, 2015).

This ecological and systemic approach represents a substantive improvement over prior Australian frameworks, which often relied on discretionary institutional practices and unstandardised support mechanisms. Nevertheless, international evidence illustrates that policy must be supported with a commitment to implementation. In Canada and the UK, similar efforts were hindered by systemic weaknesses, including limited institutional investment in support infrastructure and a failure to include victim-survivors and those with lived experience in policy design and implementation.

To ensure the effectiveness of its victim-survivor-centred provisions, the Australian Government must support higher education providers through sustained financial investment and allocation of time and institutional capacity toward developing appropriate frameworks that meaningfully include individuals with lived experience. This aligns with responsive regulation theory, which emphasises the importance of stakeholder engagement in producing durable, context-sensitive reforms (Braithwaite et al., 2007).

Transparency and evaluation: Embedding an evidence culture

One of the most forward-looking elements of the Australian National Code is its emphasis on data collection and analysis, and continuous improvement. Standard 6 requires institutions to contribute to a national evidence base by gathering de-identified data. This reflects a broader shift in public administration toward evidence-based policy and adaptive governance.

In comparison, neither Canada nor the UK has developed a comprehensive or standardised data infrastructure for tracking institutional responses to GBV (OfS, 2021). The absence of reliable, sector-wide data in these jurisdictions has hampered the evaluation of interventions and obscured systemic patterns of failure or success.

Conclusion

The introduction of Australia's National Code represents an important moment in the governance of tertiary education. It reflects a decisive shift away from discretionary, institution-led policies toward a nationally harmonised, enforceable regulatory regime. By embedding legal obligations within federal legislation and establishing a central oversight body with investigatory and punitive authority, the National Code sets a new benchmark for institutional accountability in the Australian higher education sector.

This regulatory architecture offers several comparative advantages. The first is the National Code's enforceability, which addresses longstanding criticisms of policy ineffectiveness stemming from voluntary compliance models. Unlike the soft-law approaches employed in Canada and the UK, the Australian model ensures that providers face tangible consequences for non-compliance. This shifts the incentive structure for university leadership. Similarly, the National Code's integrative design, including governance structures, complaint systems, support services, data practices, and accommodation, aligns with international best practices that conceptualise GBV as a systemic issue requiring a whole-of-institution response (OurWatch, 2021).

Yet alongside these strengths lie critical risks, most notably, the potential for procedural overreach and regulatory centralisation. The requirement for institutions to vet staff and people engaged by providers for past GBV allegations, in the absence of formal findings, can compromise principles of natural justice and cause tensions with legal norms concerning privacy and presumption of innocence. Without procedural safeguards, such measures risk undermining the legitimacy of the National Code's implementation. Further, the centralisation of regulatory functions within the Department of Education raises concerns about the erosion of institutional autonomy and the possibility of duplicating oversight alongside existing agencies such as TEQSA.

These challenges underscore a broader insight from regulatory governance and legal pluralism: successful policy reform in higher education requires more than legal compulsion. As Black (2001) and Braithwaite et al. (2007) argue, regulatory regimes that fail to engage with the complex and competing normative orders that govern institutional behaviour are likely to encounter implementation gaps or resistance. The U.S. experience with Title IX, for example, illustrates this point vividly. Rapid shifts in federal policy and a focus on legal defensibility over educational reform have led to disagreement about the interpretation and implementation of Title IX, which, in turn, has had administrative burdens and a chilling effect on both complainants and respondents (Cantalupo, 2020).

The National Code provides an opportunity to recalibrate the relationship between universities and the students they serve. If implemented carefully, and with a commitment to balancing rights and responsibilities, it has the potential to position Australia as a global leader in addressing GBV in higher education. However, legal reform must be part of a multi-dimensional, holistic strategy, not a standalone solution. To fully realise its potential, the National Code must be complemented by initiatives that address the drivers of GBV across the broader Australian community. Ultimately, the pursuit of gender equality is a collective effort.

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