

Confidentiality clauses preventing students from seeking support

The National Student Ombudsman's first own motion investigation report, published today, found the use of confidentiality clauses by universities could be restricting students from seeking support and discouraging them from making a complaint.

Confidentiality clauses often automatically apply to students when they lodge a complaint or have a complaint lodged about them. They can prevent students from speaking with anyone outside of the university about the experience they are complaining about, the outcome of their complaint or the fact they have made a complaint at all.

'Students should have the right to talk to others for support and seek external advice after they have made a complaint to their higher education provider.'

'Confidentiality obligations should be reasonable, proportionate, and clear. Excessive confidentiality can cause a complainant to feel silenced or disempowered about the experience they had that led them to complain,' said National Student Ombudsman, Iain Anderson.

The review conducted by the National Student Ombudsman (NSO) identified 21 universities using confidentiality clauses — just under half of the 44 universities in Australia. This means up to 770,000 students could be subject to confidentiality requirements if they make a complaint.

The investigation sought to understand whether confidentiality requirements are applied to protect the wellbeing of students.

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The investigation found that confidentiality requirements were improperly applied by 3 universities — James Cook University, the University of Newcastle and the University of Technology Sydney. For each university, the NSO found its application of confidentiality clauses impacted one or more of the principles of trauma-informed practice, putting student wellbeing and recovery at risk.

'I am concerned that students involved in complaint processes subject to confidentiality clauses could be left unable to discuss the situation with a support person, seek legal advice, contact a health professional for support, or take ownership of how they talk about a traumatic experience including gender-based violence,' added Mr Anderson.

In one case reviewed in the investigation, a university commenced misconduct proceedings against a student when it was alleged, they had breached confidentiality after they had reported sexual harassment to their university.

The Ombudsman made 7 recommendations targeted at higher education providers that apply or are considering whether to apply confidentiality requirements to student complaints.

The recommendations include building exceptions to confidentiality into official policies to allow students access to support, including a clear release point from confidentiality at the end of a complaint or misconduct process, providing plain English guidance to students to explain any requirements, and ensuring confidentiality applies only to the complaint process and is not extended to a student's experience.

Read the [full investigation report](#) on the NSO website.

For more information visit nso.gov.au or for media enquiries email media@ombudsman.gov.au.