

22 September 2023

Dear Department of Education,

Support for students policy consultation

Thank you for the opportunity to provide a submission in response to the *Support for students policy consultation paper*.

I was recently awarded my doctorate with the Australian Human Rights Institute at the University of New South Wales. My thesis, *Regulatory responses to sexual assault and sexual harassment in Australian university settings*, took a system-wide structural approach to interrogate why there has been so little progress in reducing campus sexual violence over the past decade. Prior to commencing my doctoral studies, I was the Campaign Director of The Hunting Ground Australia Project (2015-2018).

I have drawn on my doctoral research to reflect on the measures proposed in the consultation paper as they may relate to sexual assault and sexual harassment in Australian university settings.

Yours sincerely,



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Introduction

An essential pre-requisite for Australia’s higher education sector is that universities and residential colleges can provide a safe learning environment for their students, free from sexual violence.

My doctoral research focused on student peer-to-peer experiences¹ and critically examined the regulatory initiatives and oversight mechanisms adopted by various actors between 2011 and 2021, arguing that substantive progress in tackling sexual violence in Australian university settings had stalled due to a combination of factors including an over-reliance on the self-regulating university sector to lead the reform effort and TEQSA’s failure to enforce the legislated Threshold Standards relating to student wellbeing and safety.

In this context, I have welcomed the Accord Panel’s recognition in their *Interim Report* that “more obviously needs to be done”² in relation to campus sexual assault and sexual harassment, and Education Minister Clare’s subsequent assertion that university efforts address sexual violence to date “have not been good enough.”³

The Accord Panel’s recommendation in Priority Action 5 that all governments should come together to improve university governance, with a focus on student and staff safety (amongst other issues), represents a positive step forward. The Government’s prompt action on Priority Action 5 – including the establishment of the cross-jurisdictional Working Group on Strengthening University Governance, the appointment of an expert on prevention and response to sexual harassment and sexual violence and a Stakeholder Reference Group, with an immediate focus on student and staff safety and addressing gender-based violence in university

¹ While focused on student peer-to-peer experiences, my research acknowledged that sexual violence involving university staff is also an issue of considerable concern, requiring greater academic and institutional attention.

² *Australian Universities Accord Interim Report*, 19 July 2023, p.21, <https://www.education.gov.au/australian-universities-accord/resources/accord-interim-report>

³ The Hon Jason Clare MP (Minister for Education), ‘Higher Education Support Amendment (Response to the Australian Universities Accord Interim Report) Bill 2023’, *Speech*, 3 August 2023, <https://ministers.education.gov.au/clare/higher-education-support-amendment-response-australian-universities-accord-interim-report>

communities – offers an overdue opportunity to integrate State and Territory governments with Commonwealth government efforts to address campus-based sexual violence.

This submission draws on my doctoral research to reflect on a number of issues raised in the *Support for students policy consultation paper*.

Universities’ support for student policies must explicitly support students subjected to sexual violence

The consultation paper’s recognition that the Support for Students policy requirements will include specific requirements for students experiencing violence or harm, including appropriate crisis and critical harm response arrangements, is welcomed.

The individual impact of sexual assault and sexual harassment is well documented and includes long term health consequences such as unwanted pregnancy, sexually transmitted diseases, anxiety, depression, social isolation, substance abuse disorders and self-harming behaviours.⁴

Incidents of sexual violence can also be highly disruptive to a survivors’ educational experiences, affecting their sense of safety on campus, limiting their extracurricular and social interaction and adversely impacting their academic performance and completion rates.⁵

⁴ In the Australian context see, for example, *Australian Human Rights Commission, Change the Course: National report on sexual assault and sexual harassment at Australian universities*, 1 August 2017, pp.98-99 <https://www.humanrights.gov.au/our-work/sex-discrimination/publications/change-course-national-report-sexual-assault-and-sexual>; End Rape on Campus Australia, *Connecting the dots: Understanding sexual assault in university communities* (January 2017), pp.15-20 <https://static1.squarespace.com/static/5762fc04f5e231826f09afae/t/58b3d08ddb29d6e7a2b8271d/1488179368580/Connecting+the+dots.pdf>. See also Matt Gray, Christina Hassija and Sarah Steinmetz, *Sexual Assault Prevention on College Campuses* (Routledge, 2017) pp.20-32; Clarissa Humphreys and Graham Towl, *Addressing Student Sexual Violence in Higher Education: A Good Practice Guide* (Emerald Publishing, 2020) pp.30-33.

⁵ In the Australian context see, for example, *Change the Course*, *op cit*, pp.99-100; *Connecting the dots*, *op cit*, pp.17-18. See also Lana Stermac, Sarah Horowitz and Sheena Bance, ‘Sexual coercion on campus: The impact of victimization and disclosure on the educational experiences of Canadian women’, in Elizabeth Quinlan, Andrea Quinlan, Curtis Fogel and Gail Taylor (eds), *Sexual Violence at Canadian Universities: Activism, Institutional Responses, and Strategies for Change* (Wilfred Laurier University Press, 2017).

Too often, Australian university students have experienced institutional betrayal, when institutions dismiss a survivor's experience, insensitively respond to a disclosure, fail to take proactive steps in investigating to a report, or academically punish a survivor for reporting. Institutional betrayal has been identified as a compounding factor in the trauma experienced by student survivors who have been disappointed by their university or residential college's response, leading to stigmatisation and further trauma-related outcomes such as anxiety and depression.⁶

Universities, as recipients of billions of dollars of taxpayer funding annually, have a responsibility to provide safe learning environment for their students, free from sexual violence, and to support students whose educational experience may be impacted by sexual violence. This also reflects Australia's obligations under the Convention on the Elimination of All Forms of Discrimination Against Women, which requires state parties to take appropriate measures to eliminate discrimination against women – who are predominately subjected to campus-based sexual violence – in a range of settings, including in educational settings.⁷

Support for Students policies proposed under the Amendment Bill must include provisions around how a university identifies students who are at risk of failing their chosen units of study after being subjected to sexual assault and/or sexual harassment and set out how the university will support these students to succeed in their courses (eg academic consideration, specialised support services).

⁶ *Connecting the dots, op cit*, pp.17, 22; Elizabeth Quinlan, 'Institutional Betrayal and Sexual Violence in the Corporate University', in Elizabeth Quinlan, Andrea Quinlan, Curtis Fogel and Gail Taylor (eds), *Sexual Violence at Canadian Universities: Activism, Institutional Responses, and Strategies for Change* (Wilfred Laurier University Press, 2017); Carla Smith and Jennifer Freyd, 'Institutional betrayal' (2014) 69(6) *American Psychologist* 575; Carla Smith and Jennifer Freyd, 'Dangerous Safe Havens: Institutional Betrayal Exacerbates Sexual Trauma' (2013) 26(1) *Journal of Traumatic Stress* 119.

⁷ Convention on the Elimination of All Forms of Discrimination against Women, art 10.

TEQSA and the *Threshold Standards*

Review of the Threshold Standards needs to be urgently accelerated

As the consultation paper notes, the Minister for Education has requested that the Higher Education Standards Panel (HESP) consider the effectiveness of the current *Threshold Standards* framework in supporting students; whether universities are appropriately implementing the Threshold Standards; and improving students' awareness of their existence.

While the Minister's referral to the HESP is welcomed, the review of the Threshold Standards framework needs to be urgently accelerated.

Review of the Threshold Standards must be an open consultation process

Recent appearances by TEQSA before Senate Committees have demonstrated that the regulator is defensive and unreceptive to criticism around its demonstrably poor handling of sexual violence in universities. The consultation process around TEQSA's *Sexual harm good practice note consultation 2023* was superficial at best (see my submission to TEQSA at Appendix A). All of the TEQSA staff approached for my doctoral research declined to be interviewed and I understand that TEQSA have been similarly unwilling to engage with key stakeholders such as student groups and survivor advocates. Taken together these factors suggest that TEQSA itself is impervious to critical analysis of its performance relating to campus-based sexual violence.

The HESP's review of the Threshold Standards must involve an open consultation process so that the Panel is exposed to a holistic assessment of how the Threshold Standards and TEQSA itself is operating in this space. The views of student representatives must be proactively sought.

Lessons from TEQSA's ineffective enforcement of the Threshold Standards as they relate to sexual violence

The consultation paper notes that:

TEQSA generally applies compliance actions to a higher education provider's registration or re-registration. They can also conduct compliance assessments, issue warnings, infringement and compliance notices (including fines), place conditions on a higher education provider's accreditation, and suspend and cancel a higher education provider's accreditation.

While these regulatory tools certainly exist within TEQSA's regulatory and legislative framework, TEQSA's reluctance to employ these coercive mechanisms in relation to campus-based sexual violence over the past six years is instructive.

The *Threshold Standards*, as a broad regulatory framework, do not specifically mention sexual assault or sexual harassment and TEQSA has relied in recent years on Standards relating to the learning environment, encompassing Wellbeing and Safety (Standard 2.3), and Student Grievances and Complaints (Standard 2.4), to try and regulate university's management and prevention of sexual assault and sexual harassment.

My doctoral research found that the current *Threshold Standards* have proven to be an ineffective mechanism for holding universities accountable around their management of sexual violence. Stakeholders from across the university sector interviewed for my research were critical of TEQSA's oversight (rather than the *Standards* themselves), expressing frustration with what they perceived as ineffective enforcement of the available *Standards*.

The *TEQSA Act* provides broad powers for TEQSA's administration of the *Threshold Standards*⁸ and the agency has utilised a range of mechanisms to serve as compliance checks and assess whether universities are abiding by the requirements in Standards 2.3 (Wellbeing and Safety) and 2.4 (Student Grievances and Complaints). Senate Estimates information collated for my

⁸ *Tertiary Education Quality and Standards Agency Act 2011* (Cth) (*TEQSA Act*), Part 5 – Higher Education Standards Framework.

research indicates that between September 2017 and 30 November 2022 TEQSA has undertaken more than 60 individual assessments of universities' sexual violence policies and procedures, including:

- 29 finalised sexual assault and sexual harassment-related complaints related to universities, with one complaint outstanding and three complaints under monitoring⁹
- 12 occasions when TEQSA engaged with seven universities in relation to sexual assault and sexual harassment-related matters raised in media reports¹⁰
- 20 assessments of the quality of university sexual assault and sexual harassment prevention and response measures, covering 14 universities (between TEQSA's June 2018 announcement that registration applications would include a core assessment of student wellbeing and safety standards and its abandonment of this practice in 2021)¹¹
- Five occasions when universities had notified TEQSA in relation to a matter of concern around sexual assault or sexual harassment.¹²

As the consultation paper notes, under the *TEQSA Act*, TEQSA has a range of regulatory tools available to utilise if it finds a provider non-compliant with the *Threshold Standards*.¹³ However, across the more than 60 investigations outlined above TEQSA has not judged a single university to be non-compliant with the *Threshold Standards* regarding Wellbeing and Safety, even on the four occasions when universities had themselves notified TEQSA in relation to a matter of concern around their handling of sexual assault or sexual harassment. The strongest sanction applied by TEQSA in relation to sexual violence in the past six years has been monitoring and annual reporting of several universities.

⁹ Senate Standing Committees on Education and Employment, Parliament of Australia, *Budget Estimates 2022–2023*, Question on Notice SQ22-000390.

¹⁰ *ibid.*

¹¹ Senate Standing Committees on Education and Employment, Parliament of Australia, *Budget Estimates 2022-23*, Question on Notice SQ22-000173.

¹² Question on Notice SQ22-000390, *op cit.*

¹³ *TEQSA Act*, Part 7 – Enforcement.

Given university's reliance on TEQSA for their accreditation, and therefore ability to operate, the regulator's administration of the *Threshold Standards* framework holds some potential to drive the Government's policy objectives around enhanced institutional support for students. However, as TEQSA's track record around campus-based sexual violence makes clear, TEQSA's reluctance to employ these compliance measures against universities undermines the potential effectiveness of the framework.

If, as suggested in the consultation paper, implementation of the Support for students policy requirements will rely on TEQSA and the Threshold Standards framework, and is to be meaningful, then TEQSA needs to be directed by Government to more robustly utilise the regulatory tools available to it towards effective enforcement of the Standards.

TEQSA complaints processes need to be overhauled

The consultation paper notes that:

TEQSA can also receive and investigate complaints which concern serious risk to students, or to the quality or reputation of the higher education sector.

The experience of student survivors and their advocates, who have attempted to engage in TEQSA's complaints processes concerning sexual violence over the past six years, is again instructive to the prospective Support for students policy requirements.

TEQSA introduced a complaints avenue in 2017 for students who were dissatisfied with their institution's management of a sexual assault or sexual harassment incident and believed that their institution had breached requirements in the *Threshold Standards*. As noted above, to November 2022 TEQSA had finalised 29 sexual assault and sexual harassment-related complaints related to universities, finding that none of the university's involved had breached the *Threshold Standards*.

Stakeholders interviewed for my doctoral research in 2021 and 2022 reported that they had lost confidence in TEQSA's processes and no longer felt comfortable directing students to TEQSA with sexual violence complaints. These stakeholders described TEQSA's complaints mechanisms as 'very onerous' – highly technical processes which unfairly placed the onus on individual survivors and their advocates to drive the process – and reported that prolonged delays in TEQSA's finalisation of complaints adversely impacted on student survivors' educational outcomes. Such delays were particularly challenging for student survivors who had already endured their institutional processes before approaching TEQSA.¹⁴ Student advocates further reported that TEQSA provided scant information to student complainants at the conclusion of their often-prolonged investigations.

If, as suggested in the consultation paper, implementation of the proposed Support for students policy requirements will rely in part on TEQSA complaints processes, then TEQSA's approach to managing complaints from students must first be overhauled so that it is student-centred and trauma-informed. Processes must be streamlined and simplified, timeframes for resolution established, and requirements introduced to ensure students and their advocates are appropriately advised of the progress and resolution of their complaints.

University self-reporting must be independently evaluated

The consultation paper states that higher education providers must prepare a report to the Minister periodically on compliance with their Support for students policy, with the specific reporting requirements to be outlined in the forthcoming Guidelines.

Relying on universities self-reporting their own compliance with their Support for students policy is highly problematic. TEQSA relied heavily on universities self-reporting their own actions in producing its January 2019 *Report to the Minister for Education: Higher education*

¹⁴ One complaint, lodged in October 2019 by End Rape on Campus Australia on behalf of a former student of the Queensland University of Technology, was not finalised until June 2021: Senate Standing Committees on Education and Employment, Parliament of Australia, *Budget Estimates 2021–2022*, Question on Notice SQ21-000551. On this occasion the student had spent almost two years seeking resolution of the matter with their university before complaining to TEQSA.

*sector response to the issue of sexual assault and sexual harassment: An overview of Australian higher education provider responses to the issue of sexual assault and sexual harassment.*¹⁵

According to the report's methodology, following the collation of initial information provided by universities and a TEQSA review of university websites between March and July 2018, TEQSA in October 2018 'provided universities with a template of a subset of the checklist and asked them to update their responses, or to complete any gaps, prior to finalising its analysis in November 2018.'¹⁶ Beyond the review of university websites, there is no indication that TEQSA checked or validated university submissions. Nor is there any mention in the report's methodology of TEQSA consulting with students and survivor advocates, or with sexual violence experts in assessing whether university responses reflected good practice.

Given this reliance on information provided by universities themselves, it was perhaps not surprising that TEQSA's report concluded that Australian universities were 'by and large, actively responding to the issue of sexual assault and sexual harassment.'¹⁷ TEQSA's assessment was proven deficient with the publication of the 2021 *National Student Safety Survey (NSSS)* results in March 2022, which demonstrated how little progress had been made by the university sector in reducing campus sexual violence.¹⁸

My doctoral research detailed activists and student advocates' frustration with the reliance on universities self-reporting their progress in responding to the *Change the Course* recommendations. One activist argued that 'self-reporting is an incredibly weak mechanism', particularly 'in a context where we know that institutions are often primarily motivated by

¹⁵ Tertiary Education Quality and Standards Agency, *Report to the Minister for Education: Higher education sector response to the issue of sexual assault and sexual harassment: An overview of Australian higher education provider responses to the issue of sexual assault and sexual harassment*, 25 January 2019

<https://www.teqsa.gov.au/sites/default/files/sash-report-march-2019.pdf?v=1552014538>.

¹⁶ *ibid*, Appendix 1.

¹⁷ *ibid*, 11.

¹⁸ Social Research Centre, *National Student Safety Survey: Report on the prevalence of sexual harassment and sexual assault among university students in 2021*, March 2022 https://assets.website-files.com/61c2583e4730c0d5b054b8ab/623ba530bc6676dfcdb1d5dc_2021%20NSSS%20National%20Report.pdf.

protecting their institutional reputation and income sources, and enrolment numbers.’ These same dynamics would apply to universities self-reporting on their Support for students policies.

To demonstrate compliance with the Support for students policy requirements, reporting by universities needs to be independently oversighted and evaluated. To ensure transparency, university reports should be collated and regularly published in a central location (eg website) that is accessible to all current and prospective students. (Question 6)

Non-compliance must be penalised

TEQSA’s demonstrable reluctance to employ the regulatory tools available to it in holding universities accountable around campus-based sexual violence has seriously undermined student’s confidence in both the regulatory and the efficacy of the *Threshold Standards*.

The Department’s approach to non-compliance with the Support for students policy requirements must be robust, imposing penalties when higher education providers fail to meet their obligations. Where a higher education provider fails to be compliant with the Support for students policy requirements, the Department must regularly publish information about breaches policy and penalties imposed. (Question 8)

Practical considerations

Poor visibility and awareness of the Threshold Standards

During my doctoral research it was clear that TEQSA and the *Threshold Standards* are not well known amongst university staff and students. The current Standards, particularly the existing requirements around Wellbeing and Safety, are not prominently promoted on university websites or in student- or staff-facing communications.

If, as suggested in the consultation paper, implementation of the proposed Support for students policy requirements will rely on TEQSA and the Threshold Standards framework, then

concerted efforts are required to increase the visibility and awareness of these mechanisms in university environments and among student bodies. (Question 9)

Resourcing

In implementing the Guidelines, and to ensure the Government's policy objectives around enhanced institutional support for students are achieved, student support services must be appropriately resourced so that students themselves can engage with the processes established by the Department. (Question 9)