

1 September 2023

Dear Australian Universities Accord Panel,


Review of Australia's Higher Education System: Interim report consultation

Thank you for the opportunity to provide a submission in response to the Australian Universities Accord Panel's Interim report.

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 by the Accord Panel in its *Interim Report* as they may relate to sexual assault and sexual harassment in Australian university settings.

Yours sincerely,



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EXECUTIVE SUMMARY

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.

The *National Student Safety Survey* released in March 2022 clearly demonstrated that efforts by universities, their peak body Universities Australia, and the national higher education regulator, the Tertiary Education and Quality Standard Agency (TEQSA), had failed to reduce the incidence of sexual assault and sexual harassment in university settings or achieve institutional accountability and transparency in the management and prevention of sexual violence following the the Australian Human Rights Commission’s landmark *Change the Course* report in 2017.¹

My doctoral research focused on student peer-to-peer experiences² and critically examined the regulatory initiatives and oversight mechanisms adopted by various actors between 2011 and 2021. My research found 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, the Accord Panel’s recognition in their *Interim Report* of the need for “concerted action” against campus sexual assault and sexual harassment, noting that “more obviously needs to be done”³ is warmly welcomed. Education Minister Clare’s subsequent assertion that the actions universities have taken to address sexual violence to date “have not been good

¹ Undertaken by the Australian Human Rights Commission in 2016, with results published in the *Change the Course* report in 2017: Australian Human Rights Commission, *Change the Course: National report on sexual assault and sexual harassment at Australian universities* (1 August 2017) <<https://www.humanrights.gov.au/our-work/sex-discrimination/publications/change-course-national-report-sexual-assault-and-sexual>>.

² 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.

³ *Australian Universities Accord Interim Report*, 19 July 2023, p.21, <https://www.education.gov.au/australian-universities-accord/resources/accord-interim-report>

enough”⁴ is similarly applauded.

Australian Universities Accord Interim Report

Priority Action 5

The inclusion of student and staff safety within the Accord’s five priority actions warranting “immediate action from governments and institutions” represents an important recognition that sexual violence in Australian universities is a serious and pressing issue requiring cross-government intervention and concerted action across the university sector.⁵

My doctoral research found that State and Territory governments, despite having responsibility for authorising legislation underpinning university governance, mostly appeared content to leave responses to campus sexual violence to the Commonwealth government, to TEQSA and ultimately to universities themselves. The establishment of the cross-jurisdictional Working Group on Strengthening University Governance, with an immediate focus on student and staff safety and addressing gender-based violence in university communities, therefore offers an important opportunity to integrate State and Territory governments with Commonwealth government efforts to address campus-based sexual violence.

While my doctoral research found that there is considerable jurisdictional variability in the Acts governing universities, and that State and Territory Ministers currently have limited directive powers over university governing bodies, this submission suggests two interventions that the new Working Group could consider in seeking to immediately tackle campus-based sexual violence: the appointment of sexual violence experts to university governing bodies and the introduction of additional public reporting requirements around sexual violence.

⁴ 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>

⁵ *Australian Universities Accord Interim Report*, *op cit*, p.138.

Drawing on my doctoral research, this submission highlights the need for the Working Group to focus on nationally consistent approaches and considers the governance and operational arrangements for residential colleges. In addressing sexual violence in residential colleges, the submission suggests that the Working Group consider a review of the legislative framework underpinning residences and the potential introduction of Minimum Standards.

Areas for further consideration

Among the additional policy ideas that the Accord Panel has flagged for further consideration, several measures may be of value in addressing campus-based sexual violence: the introduction a national code of practice and governance for university councils; enhanced public reporting by universities; strengthening the role for the Commonwealth Ombudsman in student complaints for both international and domestic students; and the development of a national student charter.⁶

While promising, these prospective measures will only be effective if they address the current systemic deficiencies. Each of the potential reforms, in isolation, will need to be student-centred, expert- and trauma-informed and appropriately resourced. They will need to be designed to respond systemically, as well as episodically as incidents arise.

Holistically, a more effective regulatory framework to ensure that Australian universities and residential colleges are responding to sexual violence in alignment with good practice must encompass robust reporting procedures, transparent monitoring and evaluation processes and meaningful independent accountability mechanisms incorporating enforceable penalties.

As the Accord Panel's proposals currently stand, this holistic ambition is not being met.

⁶*ibid.*

INTRODUCTION

Over the past decade, key actors in the Australian university sector have adopted a range of initiatives aimed at strengthening responses to sexual violence in university settings. These initiatives have included efforts by individual universities and colleges, led by their peak bodies Universities Australia (UA) and University Colleges Australia, as well as enhanced oversight mechanisms introduced by the Tertiary Education Quality and Standards Agency (TEQSA).

These interventions provided an opportunity for the Australian university sector to publicly showcase their efforts in ‘taking action’ to address campus sexual violence. Similarly, apparent oversight and guidance from regulatory agencies implied that there was a robust framework in place for tackling student sexual assault and sexual harassment in Australian universities.

However, on closer examination during my doctoral research,⁷ it became apparent that this range of initiatives instead reflected a fragmented, multi-layered and uncoordinated response characterised by duplication of effort by a range of actors, often acting in isolation from one another. Furthermore, when viewing these initiatives at a structural and systemic level, there was a chronic lack of transparency and enforceability, leading to a complete absence of institutional accountability.

The release of the *National Student Safety Survey* (NSSS) in March 2022⁸ highlighted the failure of this regulatory system, clearly demonstrating how the Australian university sector and TEQSA had failed to reduce campus sexual violence or achieve institutional accountability and transparency in the management and prevention of sexual assault and sexual harassment.

⁷ My thesis, *Regulatory responses to sexual assault and sexual harassment in Australian university settings*, is available at <https://doi.org/10.26190/unsworks/24894>.

⁸ The NSSS was undertaken online from 6 September 2021 to 3 October 2021. The in-scope population for the survey was students studying at Australian universities aged 18 and over. A total of 43,819 students participated in the survey, for a completion rate of 11.6%. The NSSS results were released in March 2022: *National Student Safety Survey* (Web Page, 23 March 2022) <<https://www.nsss.edu.au>>. See Social Research Centre, *National Student Safety Survey: Report on the prevalence of sexual harassment and sexual assault among university students in 2021*, https://assets.website-files.com/61c2583e4730c0d5b054b8ab/623ba530bc6676dfcdb1d5dc_2021%20NSSS%20National%20Report.pdf

It is important to acknowledge that these regulatory failings have – and continue every week – to adversely impact students who have been subjected to sexual violence at their universities or residential colleges.

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.⁹

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.¹⁰

Further compounding these harmful impacts, many 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 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.¹¹

⁹ In the Australian context see, for example, *Change the Course, op cit*, pp.98-99; 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.

¹⁰ In the Australian context see, for example, *Change the Course* pp.99-100; *Connecting the dots* 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).

¹¹ *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.

Reflecting these factors, the Accord Panel’s recognition in their *Interim Report* of the need for “concerted action” against campus sexual assault and sexual harassment in Australian universities is warmly welcomed. I have drawn on my doctoral research to reflect on the measures proposed in the *Interim Report* as they may relate to sexual assault and sexual harassment in Australian university settings.

PRIORITY ACTION 5 – REFORMS IN UNIVERSITY GOVERNANCE TO SUPPORT STUDENT AND STAFF SAFETY

My doctoral research found that the complex and fragmented legislative framework for governing, funding and regulating Australia’s universities and residential colleges had significantly impeded the adoption of systemic and nationally consistent approaches to addressing campus sexual violence.

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), therefore represents a positive step forward. The Commonwealth government’s subsequent establishment of a new cross-jurisdictional Working Group on Strengthening University Governance, including an expert on prevention and response to sexual harassment and sexual violence and a Stakeholder Reference Group, to provide advice to Australia’s Education Ministers on the immediate actions required to improve student and staff safety on campus, including in student accommodation settings, is similarly very welcome.

Given that State and Territory statutes provide for the governance arrangements of most individual universities,¹² the inclusion of State and Territory governments in developing systemic national responses is essential.

¹² The Australian National University is governed by Commonwealth legislation, the Australian National University Act 1991 (Cth). The Australian Catholic University is incorporated in Victoria as a public company but governed by a NSW Act. Australia’s two private universities, The University of Notre Dame and Bond University, are respectively regulated by Western Australian and Queensland Acts.

Opportunities

While my doctoral research found that there is considerable jurisdictional variability in the Acts governing universities, and that State and Territory Ministers currently have limited directive powers over university governing bodies, there are several specific areas that the new Working Group could consider in addressing campus-based sexual violence.

Appointment of sexual violence experts to university governing bodies

Many State and Territory statutes provide for Ministerial involvement in appointments to university governing bodies, usually a Council or Senate.¹³ In addition, the Commonwealth Minister has the power, on the recommendation of the Nominations Committee of Council, to appoint seven members to the ANU Council.¹⁴

The Accord Panel's recommendation that governments should work together to rebalance the composition of university governing boards "to put greater emphasis on higher education expertise"¹⁵ offers a crucial opportunity for governments to appoint or recommend individuals with expertise around sexual violence to university Senates and Councils. This would not only bring evidence-based perspectives to university governing bodies but also signal the prioritisation of sexual violence across university communities.

Introduction of additional reporting requirements around sexual violence to increase institutional transparency

While some universities and residential colleges have been proactive in reporting on their efforts to manage and prevent sexual violence,¹⁶ most have not been forthcoming. My research

¹³ See for example, *University of Canberra Act 1989* (ACT) s 11(1)(d); *University of Sydney Act 1989* (NSW) s 8G; *University of Tasmania Act 1992* (Tas) s 8; *Deakin University Act 2009* (Vic) s 8.

¹⁴ *Australian National University Act 1991* (Cth), s 10(1)(q).

¹⁵ *Australian Universities Accord Interim Report*, *op cit*, p.13.

¹⁶ For example, UNSW publishes an Annual Reports on *Sexual Misconduct Prevention & Response* which includes information on key institutional actions as well as data recording the status and outcome of each investigation: <https://www.edi.unsw.edu.au/sites/default/files/documents/Final%202021%20Annual%20Report%20230622.pdf>. Several University of Sydney colleges have reported on their progress: see, for example, St Andrew's College, *Report on implementation of recommendations – end of year two* (30 November 2019) <https://www.standrewscollege.edu.au/wp-content/uploads/Broderick-End-of-Year-two-1.pdf>.

indicates, for example, that only a quarter of Australia's universities have collated and published information on their websites about sexual violence reports and disclosures or subsequent disciplinary actions.¹⁷

The Accord Panel's 'potential proposal' to improve the the operations of governing bodies by adopting a national code of practice and governance for university councils, coupled with enhanced public reporting,¹⁸ offers an opportunity to address this deficiency.

Several State and Territory statutes governing universities already require universities to provide annual reports to the Minister,¹⁹ and/or reports to the Minister on their commercial activities.²⁰ Public universities are also subject to audit arrangements in all State and Territory jurisdictions in accordance with the requirements of their respective statutes.²¹

State and Territory governments (and the Commonwealth government in relation to ANU) could require universities to provide an annual report to the Minister, or publish an annual report on their website, detailing the sexual harassment and sexual assault complaints they have received and how they have responded, including the timeframes for resolution and any disciplinary actions taken. Such annual reports would provide an insight into institutional practices, and an important comparative data point to national survey data such as collected by

¹⁷ At the time of my research these universities included: Australian National University, Macquarie University, UTS, UNSW, University of Tasmania, Swinburne University, University of Melbourne and Curtin University.

¹⁸ *Australian Universities Accord Interim Report*, *op cit*, p.138.

¹⁹ See for example *University of Canberra Act 1989* (ACT), s 36; *Charles Darwin University Act 2003* (NT), s 39; *Flinders University Act 1966* (SA) s 27; *University of Adelaide Act 1971* (SA) s 25; *University of South Australia Act 1990* (SA) s 18.

²⁰ See for example *Charles Sturt University Act 1989* (NSW) s 24D; *Macquarie University Act 1989* (NSW) s 21D; *Southern Cross University Act 1993* (NSW) s 21D; *University of New England Act 1993* (NSW) s 21D; *University of Newcastle Act 1989* (NSW) s 21D; *University of Sydney Act 1989* (NSW) s 26D; *University of Technology Sydney Act 1989* (NSW) s 21D; *University of Wollongong Act 1989* (NSW) s 21D; *University of New South Wales Act 1989* (NSW) s 20D; *Western Sydney University Act 1997* (NSW) s 32D.

²¹ *Auditor-General Act 1996* (ACT); *Public Finance and Audit Act 1983* (NSW); *Audit Act 1995* (NT); *Auditor-General Act 2009* (Qld); *Public Finance and Audit Act 1987* (SA); *Audit Act 2008* (Tas); *Audit Act 1994* (Vic) and *Auditor General Act 2006* (WA). Reflecting its foundational legislation, the Australian National University comes within the jurisdiction of the Commonwealth Australian National Audit Office rather than the ACT Audit Office.

the NSSS.²² In addition to enhancing institutional accountability, mandated annual reports would also assist in addressing the call, in submissions to the NSSS, for “visible and proportionate disciplinary action for perpetrators to show that universities take sexual harassment and sexual assault reports seriously.”²³

Challenges

Two key challenges for the new cross-jurisdictional Working Group will be in achieving nationally consistent responses to campus sexual violence, both across jurisdictions and more than 40 individual institutions, and addressing the alarming incidence of sexual violence within residential colleges.

The need for nationally consistent approaches

To ensure that students subjected to sexual violence do not experience a ‘postcode lottery’ in how their institutions respond to, and support them, it is essential that reforms considered and adopted by the Working Group are nationally consistent in their approach.

Australian universities vary greatly in size and resources. Some of Australia’s universities encompass very large populations: in 2020 Monash University had 85,924 students, RMIT 74,599 and The University of Sydney 72,585.²⁴ In relation to staff numbers, The University of Melbourne, Monash University, The University of Sydney, the University of Queensland and UNSW each employed more than 6000 full-time staff in 2020.²⁵ By contrast, Australia’s

²² Recent media coverage highlighted the importance of identifying disparities between individual university reporting data at the University of Sydney and NSSS data: Georgina Noack, ‘More than 100 students and staff at University of Sydney victims of sexual assault, harassment’, *news.com.au*, 29 August 2023, <https://www.news.com.au/lifestyle/real-life/news-life/more-than-100-students-and-staff-at-university-of-sydney-victims-of-sexual-assault-harassment/news-story/d49751bb71ed6e3ba785a586da446f6c>

²³ Social Research Centre, *National Student Safety Survey: Qualitative research on experiences of sexual harassment and sexual assault among university students in 2021*, p.2, https://assets.website-files.com/61c2583e4730c0d5b054b8ab/623ba52f5687af0a108ac8ae_2021%20NSSS%20Qualitative%20Report.pdf

²⁴ *2020 Student Summary Tables* (n 69), Table 4: Summary of student numbers - List of Higher Education Institutions, 2020.

²⁵ *2020 Staff Numbers* (n 70), Table 2.5: Number of Full-time and Fractional Full-time Staff by State, Higher Education Institution, Work Contract and Gender, 2020.

smallest universities in 2020 were Federation University (16,772 students and 906 full-time staff), the University of Canberra (16,347 students and 882 full-time staff) and Charles Darwin University (13,769 students and 722 full-time staff).²⁶

The annual operating budgets of Australian universities also vary greatly. For example, Monash University, the University of Melbourne and The University of Sydney all had operating revenue of between \$2.4 and \$3.5 billion in 2020 and 2021²⁷ while the University of the Sunshine Coast and Charles Darwin University each had income of around \$340 million.²⁸

Institutional size and resource availability naturally impacts the priorities and sense of self-interest of individual universities, as well as the institutional capacity to introduce and sustain policies and programs. To ensure that students subjected to sexual violence across Australia are supported in consistent ways, so that students at smaller less-resourced universities are not disadvantaged, it is also important that reforms adopted by the cross-jurisdictional Working Group are appropriately resourced.

It is notable that Universities Australia (UA) have recently rejected “one-size-fits-all intervention strategies” to sexual harm in Australian universities, suggesting that individual universities are best placed to lead this work because they “have strong understandings of their own unique demographics, campuses and students.”²⁹ This assertion contradicts UA’s positioning around the national *Respect.Now.Always.* campaign, described by UA’s then Chair at its launch in

²⁶ *2020 Student Summary Tables* (n 69), Table 4: Summary of student numbers - List of Higher Education Institutions, 2020; *2020 Staff Numbers* (n 70), Table 2.5: Number of Full-time and Fractional Full-time Staff by State, Higher Education Institution, Work Contract and Gender, 2020.

²⁷ Monash University, *Annual Report 2021*, 110

<https://www.monash.edu/__data/assets/pdf_file/0004/2914366/Monash-University-Annual-Report-2021.pdf>;

The University of Sydney, *Annual Report 2021*, 46 <<https://www.sydney.edu.au/about-us/vision-and-values/annual-report.html>>; The University of Melbourne, *Annual Report 2021*, 80

<https://www.annualreport.about.unimelb.edu.au/_files/ugd/0ac31a_c020d00cc771476eb51f2065413107d2.pdf>.

²⁸ University of the Sunshine Coast, *Annual Report 2021*, 40 <<https://www.usc.edu.au/media/c3xdye0n/2021-usc-annual-report-financials.pdf>>; Charles Darwin University, *Annual Report 2021*, 12

<<https://www.cdu.edu.au/files/2022-06/cdu-annual-report-2021.pdf>>.

²⁹ Universities Australia, ‘Universities Australia Statement on Sexual Harm’, *Media release*, 9 August 2023, <https://www.universitiesaustralia.edu.au/media-item/universities-australia-statement-on-sexual-harm/>

February 2016 as “... groundbreaking work [that] appears to be the first in the world where a national university sector has decided to work together on these issues...”³⁰

Amongst stakeholders interviewed for my doctoral research, UA’s sector-wide leadership from 2016 was identified as particularly helpful for smaller, less resourced institutions and those who were initially less engaged. One former university stakeholder suggested that the national approach assisted in ‘bringing the whole sector on board’. An activist similarly thought that UA had identified that there were good systems, guidelines and roadmaps in place in some universities, but recognised that universities were operating at different paces: by leading work from a national perspective UA had ‘been able to pull up some of those laggards.’ A former student advocate similarly observed the impact of peer pressure, noting that once several universities publicly recognised the issue, ‘... it sort of set a standard for other universities ... they didn’t want to be seen as lagging behind.’

These findings reinforce the need for national leadership and the adoption of nationally consistent rather than piecemeal approaches to campus sexual violence.

Addressing sexual violence in residential colleges

Both the *Change the Course* and NSSS national surveys found that residential colleges were a particularly problematic site for campus sexual violence. The NSSS found, for example, that the most common locations of the most impactful incident of sexual assault were on campus, including clubs and societies events or spaces (25.8%) and student accommodation or residences (25.3%) and that students who live in student accommodation or residences (19%) were more likely to have experienced sexual harassment in the past 12 months.³¹

³⁰ Universities Australia, ‘RESPECT. NOW. ALWAYS. University Sector Launches New Campaign’, *Media release*, 12 February 2016, <https://www.universitiesaustralia.edu.au/media-item/respect-now-always-university-sector-launches-new-campaign/>

³¹ Social Research Centre, *National Student Safety Survey: Report on the prevalence of sexual harassment and sexual assault among university students in 2021*, *op cit*, pp. 37, 2.

While State and Territory statutes provide for university governance arrangements, residential colleges affiliated or otherwise connected with universities are currently subject to substantially less legislative attention and regulatory oversight than universities.

My doctoral research found that the more than 220 residential colleges – both public and private entities, including both non-profits organisations and for-profit businesses – associated with Australian universities colleges are overseen by a fragmented and inconsistent range of State and Territory legislative arrangements, with highly variable legal standing between jurisdictions. Some State and Territory statutes governing universities include provisions for the establishment and operation of ‘other bodies’ such as residential colleges, thereby providing the basis for some legal relationship between residential colleges and their respective ‘host’ universities and, by extension, their local State or Territory government. In some jurisdictions older, well-established residential colleges have their own independent statutory authority³² but in many cases, residential colleges appear to have no legislative basis.³³

The governance and operational arrangements for residential colleges also vary greatly within individual university eco-systems and across Australian jurisdictions. While most ‘traditional’ residential colleges are incorporated entities governed by a Council or Board structure, some operate as public companies. Many were established by, and remain closely associated with, religious bodies and most maintain enduring connections with their alumni – relationships which are formally preserved and fostered through the colleges’ contemporary governance arrangements. Structural connections to the universities where they are based, and sometimes formally affiliated – via university statutes or university representatives on their governing bodies – vary greatly. There is little evidence of any formal reporting requirements or other accountability from colleges to their ‘host’ universities.

³² See for example *Sancta Sophia College Incorporation Act 1929* (NSW); *St Andrew’s College Act 1998* (NSW); *Saint John’s College Act 2018* (NSW); *Saint Paul’s College Act 2018* (NSW); *Women’s College Act 1902* (NSW); *Wesley College Incorporation Act 1910* (NSW), the *Trinity College Act 1979* (Vic).

³³ In addition, the commercial accommodation businesses which have emerged in more recent years, such as IGLU, UniLodge, Urbanest, largely operate as independent corporate entities.

This jigsaw of statutory arrangements and governance structures means that most residential colleges are wholly independent of the authority of both the universities with which they are associated and the governments in whose jurisdiction they are based. Furthermore, residential colleges receive no direct funding from the Commonwealth government and are not subject to either the *Higher Education Support Act 2003* (Cth) or the *Tertiary Education Quality and Standards Agency Act 2011* (Cth), meaning that the Commonwealth government lacks funding and regulatory levers to influence operations within these institutions.

Review legislative frameworks underpinning residential colleges

Given these constraints, the recommendation in the Australian Human Rights Centre's *On Safe Ground: A Good Practice Guide for Australian Universities* report in 2017, that State and Territory governments "review the legislative frameworks regulating the relationship between Australian universities and residential colleges, halls and residences with a view to enacting requisite amendments or repeals of authorising Acts to ensure that residential college operations and personnel are unequivocally brought within the application of university policies relating to sexual assault and harassment"³⁴ remains highly relevant.

Introduction of Minimum Standards for residential colleges

Another potential area for the cross-jurisdictional Working Group to consider, as suggested by representatives from residential colleges interviewed for my doctoral research, is the introduction of Minimum Standards for residential colleges, similar to those relating to boarding houses.³⁵ Such Standards, supported by requisite resourcing, could articulate consistent expectations around standards of behaviour, codes of conduct and sanctions in relation to sexual assault and sexual harassment; regulation of alcohol; staffing qualifications, skills and training; access to sexual violence support services; provision of alternative accommodation arrangements following an incident of sexual violence and similar relevant

³⁴ Andrea Durbach and Kirsten Keith, *On Safe Ground: A Good Practice Guide for Australian Universities* (Australian Human Rights Centre, UNSW, August 2017) Recommendation 5
<https://www.humanrights.unsw.edu.au/sites/default/files/documents/AHR0002_On_Safe_Ground_Good_Practice_Guide_online.pdf>.

³⁵ See, for example, *Boarding Houses Regulation 2013* (NSW), Schedule 1.

issues. The introduction of Minimum Standards could promote good practice and establish consistency amongst residential colleges in their approach to managing and preventing sexual violence.

AREAS FOR FURTHER CONSIDERATION

Among the more than 70 ‘potential proposals’ that the Accord Panel has identified in their *Interim Report*, for further consideration ahead of their final report in December, several mechanisms have potential to positively impact on the management of campus sexual violence in university settings. These include:

- adopting a national code of practice and governance for university councils, coupled with enhanced public reporting (as discussed above);³⁶
- strengthening the role for the Commonwealth Ombudsman in student complaints for both international and domestic students;³⁷ and
- considering the development of a national student charter, co-designed with students, to “ensure a consistent national approach to the welfare, safety and wellbeing of all students”.³⁸

The recommendations relating to the introduction of a new complaints pathway through the Commonwealth Ombudsman and the development of a new national student charter certainly offer potential, however it is suggested that both mechanisms would need to address the current deficiencies in TEQSA’s regulatory framework if they are to be effective in tackling campus sexual violence.

³⁶ *Australian Universities Accord Interim Report, op cit*, p.138.

³⁷ *ibid*

³⁸ *ibid.*

A strengthened role for the Commonwealth Ombudsman in student complaints?

Students who have been subjected to sexual violence within university settings, who may seek redress beyond the administrative or disciplinary mechanisms offered by their university, residential college and/or the criminal justice system, currently face a confronting and confusing array of options. These include anti-discrimination and equal opportunity pathways, Work Health and Safety frameworks, and TEQSA and Ombudsman complaints procedures. To navigate these options student survivors require an awareness and understanding of the myriad complaint options available and the time, resources and support required to pursue these avenues.

In this context, the introduction of a clear, streamlined, complaints process – external to universities and residential colleges – where student survivors could report and seek redress in relation to university or college’s handling of sexual violence incidents would be a welcome development.

However, it is suggested that such a mechanism would need to significantly improve on TEQSA’s existing complaints process if it was to gain the confidence of student survivors and their advocates.

TEQSA complaints processes

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*.

However, 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. Student advocates further reported that TEQSA provided scant information to student complainants at the conclusion of their often-prolonged investigations.

Student survivors and advocates have also expressed disillusionment with the outcomes of TEQSA complaint investigations. As discussed further below, Senate Estimates information collated for my doctoral research indicates that between September 2017 and 30 November 2022 TEQSA finalised some 29 sexual assault and sexual harassment-related complaints/concerns related to universities, finding no instances where a university had breached the *Threshold Standards* regarding Wellbeing and Safety.³⁹

Given the Commonwealth Ombudsman’s current powers in relation to international students, in considering whether the Commonwealth Ombudsman is an appropriate avenue for future complaints around campus sexual violence, both these procedural issues and issues of enforceability and accountability would first need to be addressed.

A new national student charter?

The development and adoption of a new national student charter, with a specific focus on welfare, safety and wellbeing of students – perhaps similar to the recently introduced *Education (Pastoral Care of Tertiary and International Learners) Code of Practice 2021* in New Zealand (as mentioned in the *Interim Report*) – might offer an opportunity to more explicitly address the management and prevention of sexual assault and sexual harassment at Australian universities. The New Zealand Code certainly appears to be more visible at New Zealand universities than Australia’s *Threshold Standards* are in Australian universities.

³⁹ *ibid.*

However, it is suggested that it is not the Standards or Code that is the key question to consider; it is how such a charter might be monitored and enforced, by what entity, and whether duties under the charter might be mandatory, backed by enforceable penalties.

While the current *Threshold Standards* have not proven to be an effective mechanism for holding universities accountable around their management of sexual violence, several stakeholders interviewed for my doctoral 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*.

Higher Education Standards Framework (Threshold Standards)

The *Threshold Standards* are made by the Minister for Education by legislative instrument⁴⁰ and specify the requirements that a higher education provider must continue to meet to be registered by TEQSA to operate in Australia as a provider of higher education. The *Threshold Standards*, as a broad regulatory framework, do not specifically mention sexual assault or sexual harassment. However, Standards relating to the learning environment, which encompass issues relating to Wellbeing and Safety (Standard 2.3), and Student Grievances and Complaints (Standard 2.4) have been identified by TEQSA as having relevance to the management and prevention of sexual assault and sexual harassment at universities.

These Standards are supported by detailed TEQSA guidance material including Guidance Notes⁴¹ and the July 2020 *Good Practice Note: Preventing and responding to sexual assault and sexual harassment in the Australian higher education sector*.⁴² These TEQSA guidance materials

⁴⁰ *TEQSA Act*, s 58(1).

⁴¹ Tertiary Education Quality and Standards Agency, *Guidance Note: Wellbeing and Safety* (January 2018, Version 1.2) <<https://www.teqsa.gov.au/latest-news/publications/guidance-note-wellbeing-and-safety>>; Tertiary Education Quality and Standards Agency, *Guidance Note: Grievance and Complaint Handling* (22 February 2019, Version 1.1) <<https://www.teqsa.gov.au/for-providers/resources/guidance-note-grievance-and-complaint-handling>>.

⁴² Tertiary Education Quality and Standards Agency, *Good Practice Note: Preventing and responding to sexual assault and sexual harassment in the Australian higher education sector* (9 July 2020) <<https://www.teqsa.gov.au/sites/default/files/good-practice-note-preventing-responding-sexual-assault->

make clear that higher education providers have a responsibility to foster an environment of wellbeing and safety for their students, under the *Threshold Standards*, including “conducting evidence-based sexual violence, drug and alcohol abuse prevention education programs”⁴³ and providing “an appropriate and effective response” to incidents occurring “on campus, off campus or online”.⁴⁴ TEQSA’s *Guidance Note: Wellbeing and Safety* also specifically refers to affiliated entities (such as residences and university colleges), providing that “Providers should actively use their influence and governance links to ... promote and foster a safe environment for students enrolled at the provider” and “encourage residences to implement counter-measures, such as evidence-based sexual violence prevention education programs, as well as programs to counter the harmful effects of alcohol and drug abuse.”⁴⁵

TEQSA’s *Guidance Note: Grievance and Complaint Handling* similarly makes explicit references to expectations around sexual violence, for example stating that “sexual assault and sexual harassment related grievance information needs to include definitions of behaviour that constitutes sexual assault or sexual harassment and contact details for support services.”⁴⁶

TEQSA’s ineffective enforcement of the Threshold Standards

Stakeholders from across the university sector interviewed for my doctoral research expressed frustration and disappointment with TEQSA’s ineffective enforcement of the existing legislated *Threshold Standards*.

The *TEQSA Act* provides broad powers for TEQSA’s administration of the *Threshold Standards*⁴⁷ and the agency has utilised a range of mechanisms to serve as compliance checks and assess whether universities are abiding by the requirements in the *Threshold Standards*. Senate

sexual_harassment-v2-0-web.pdf>. TEQSA’s guidance materials around sexual violence are currently under revision after a consultation period closed on 13 July 2023: see <https://www.teqsa.gov.au/About-us/engagement/consultation#previous-consultations>

⁴³ TEQSA, *Guidance Note: Wellbeing and Safety*, *op cit*, p.2.

⁴⁴ *ibid*, p.5.

⁴⁵ *ibid*, pp.1-2.

⁴⁶ TEQSA, *Guidance Note: Grievance and Complaint Handling*, p.5.

⁴⁷ *TEQSA Act*, Part 5 – Higher Education Standards Framework.

Estimates information collated for my 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/concerns related to universities, with one complaint outstanding and three complaints/concerns under monitoring (as discussed above)⁴⁸
- 12 occasions when TEQSA engaged with seven universities in relation to sexual assault and sexual harassment-related matters raised in media reports⁴⁹
- 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)⁵⁰
- Five occasions when universities had notified TEQSA in relation to a matter of concern around sexual assault or sexual harassment.⁵¹

TEQSA has a range of regulatory tools available under the *TEQSA Act* to utilise if it finds a provider non-compliant with the *Threshold Standards*, including administrative sanctions such as shortening or cancelling the period of an accredited course or a provider's registration;⁵² civil penalty provisions;⁵³ infringement notices;⁵⁴ enforceable undertakings;⁵⁵ and injunctions.⁵⁶ 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

⁴⁸ Senate Standing Committees on Education and Employment, Parliament of Australia, *Budget Estimates 2022–2023*, Question on Notice SQ22-000390.

⁴⁹ *ibid.*

⁵⁰ Senate Standing Committees on Education and Employment, Parliament of Australia, *Budget Estimates 2022–23*, Question on Notice SQ22-000173.

⁵¹ Question on Notice SQ22-000390, *op cit.*

⁵² *TESQA Act*, Part 7 Div 1 – Administrative sanctions.

⁵³ *TESQA Act*, Part 7 Div 5 – Civil penalty provisions.

⁵⁴ *TESQA Act*, Part 7 Div 6 – Infringement notices.

⁵⁵ *TESQA Act*, Part 7 Div 7 – Enforceable undertakings.

⁵⁶ *TESQA Act*, Part 7 Div 8 – Injunctions.

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 five years has been monitoring and annual reporting of several universities.

It is noted that Minister Clare has recently sent a referral to the Higher Education Standards Panel asking that they consider the effectiveness of the current *Threshold Standards* framework in supporting students. Importantly, the Minister has specified that the Panel consider how to ensure universities are appropriately implementing the Threshold Standards; and improving students' awareness of their existence. The outcomes above in relation to sexual violence matters suggest that a more robust application of existing regulatory tools by TEQSA, towards effective enforcement, may be warranted.

CONCLUSION

The range of measures addressing campus sexual violence in the Accord Panel's *Interim Report*, most particularly the priority action on university governance, are broadly welcomed.

As this submission attempts to demonstrate, the prospective measures suggested for further consideration by the Panel have promise, but they will only be effective in addressing sexual assault and sexual harassment in university settings if they can address the systemic deficiencies that have been identified in the existing regulatory framework.

Duplicating complaints processes or creating new standards **without addressing the core issue of institutional accountability** will simply fail students who have been subjected to sexual violence.

Each of the potential reforms, in isolation, will need to be student-centred, expert- and trauma-informed and appropriately resourced. They will need to be designed to respond systemically, as well as episodically as incidents arise so that patterns across universities and across the sector can be identified and acted on.

To create a more effective regulatory framework to ensure that Australian universities and residential colleges are responding to sexual violence in alignment with good practice, however, requires a holistic response encompassing robust reporting procedures, transparent monitoring and evaluation processes and meaningful independent accountability mechanisms incorporating enforceable penalties. There is more work to be done to achieve this objective.