

19 December 2022

Dear Australian Universities Accord Panel,

Review of Australia's Higher Education System

Thank you for the opportunity to provide a submission to the Panel in relation to the Review of Australia's Higher Education System.

I am a doctoral candidate with the Australian Human Rights Institute at the University of NSW, where I will shortly be submitting my thesis, *Regulatory responses to sexual assault and sexual harassment in Australian university settings*. My research takes a system-wide structural approach to interrogate why there has been little progress in reducing campus sexual violence.

Prior to commencing my doctoral studies, I was the Campaign Director of The Hunting Ground Australia Project (2015-2018), which has been credited with "dramatically rais[ing] awareness in the university sector and Australian community of sexual violence at universities."¹

While the Terms of Reference for the Review are very broad, I appreciate that the issue of campus sexual violence may not immediately appear to align with the Panel's remit. However, alongside my colleagues from Fair Agenda and End Rape on Campus (who have made a complementary submission to the Panel), we have been advised by Minister Clare's office that the Accord process is the most appropriate avenue for consideration of these issues.

Drawing on my recent doctoral research, I have prepared a targeted submission focused on the shortcomings of the current regulatory approach to sexual assault and sexual harassment in Australian university settings. I would be very happy to expand on the submission for the Panel and can be contacted at [REDACTED] or [REDACTED].

Yours sincerely,



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¹ Indira Rosenthal and Robin Banks, *An Initial Review of Sexual Assault and Sexual Harassment Prevention and Response at the University of Tasmania* (March 2018) <http://www.utas.edu.au/_data/assets/pdf_file/0009/1115982/SASH-Review-Report-Final-23-April-2018-002.pdf> 3.

Term of Reference #4: Governance, accountability and community

- *Enhance regulatory and workplace relations settings to support universities to meet their obligations to both staff and students.*

Introduction

In response to high-profile campaigning and the release in 2017 of the first comprehensive national survey data on the incidence of campus-based sexual assault and sexual harassment in Australia,² key actors in the Australian university sector have in recent years 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 and University Colleges Australia, as well as enhanced oversight mechanisms introduced by the Australian Human Rights Commission and the Tertiary Education Quality and Standards Agency (TEQSA).

Despite this concerted effort, the release of the the 2021 National Student Safety Survey (NSSS) in March 2022³ demonstrated that the Australian university sector and TEQSA have failed to reduce campus sexual violence or achieve institutional accountability and transparency in the management and prevention of sexual assault and sexual harassment.

My doctoral research⁴ has attributed these failings, in part, to an over-reliance on the self-regulating university sector to lead the reform effort and deficiencies in TEQSA's regulatory approach. These regulatory failings have adversely impacted on the delivery of quality education to students, including international students, who have been subjected to sexual violence.

² Undertaken by the Australian Human Rights Commission in 2016, with results published in the landmark *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>>.

³ The *National Student Safety Survey* results were released in March 2022: *National Student Safety Survey* (Web Page, 23 March 2022) <<https://www.nsss.edu.au>>. See Appendix A for an overview of the NSSS findings.

⁴ My research is focused on student peer-to-peer experiences, while acknowledging that sexual violence involving university staff is also an issue of considerable concern, requiring greater academic and institutional attention.

Impact of sexual violence and institutional betrayal on students

The individual impact of campus harm is well documented, with long term health consequences including unwanted pregnancy, sexually transmitted diseases, anxiety, depression, social isolation, substance abuse disorders and self-harming behaviours.⁵ 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.⁶

Further compounding these harmful impacts, many Australian university students have experienced institutional betrayal – for example, 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.⁷

University sector responses to sexual violence

In recent years, and particularly following the 2017 *Change the Course* report, Australian universities and residential colleges began to take steps to address sexual violence within their

⁵ In the Australian context see, for example, *Change the Course* 98-99; End Rape on Campus Australia, *Connecting the dots: Understanding sexual assault in university communities* (January 2017), 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) 20-32; Clarissa Humphreys and Graham Towl, *Addressing Student Sexual Violence in Higher Education: A Good Practice Guide* (Emerald Publishing, 2020) 30-33.

⁶ In the Australian context see, for example, *Change the Course* 99-100; *Connecting the dots* 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).

⁷ *Connecting the dots* 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.

institutions. This has included commitments to undertake reviews of existing university policies and response pathways; introduce new sexual assault and harassment policies, online reporting tools and confidential data collection processes; increase respectful relationship and consent education, first responder and bystander training programs; enhance access to counselling services; and increase visibility of support and reporting pathways.

While these commitments are welcome, my research has found that these efforts have been characterised by both a lack of transparency and accountability, with an absence of enforceability in the implementation of these measures. Some universities have been proactive in reporting on these efforts, and how they are managing sexual violence reports,⁸ but most have not been as transparent, and assessing whether universities have actually delivered on their commitments can be incredibly difficult. This lack of institutional transparency has been compounded by a sector-wide absence of monitoring and evaluation, to assess whether measures that have been adopted are contributing to student safety and wellbeing.

The peak body, Universities Australia, has led work in this area under its *Respect.Now.Always.* campaign, but given universities' independent and self-regulating status, it has no authority to enforce good practice with their members. Furthermore, UA has not monitored or evaluated the implementation of their sector-wide guidance or resources.

The NSSS results, which demonstrated that there has been no substantive improvement in the prevalence of campus sexual violence over the past five years, indicates that university self-regulating efforts to date are not working. This failure has resulted in significant frustration and disappointment to individual students who have been subjected to sexual violence, and to the student representative and activist organisations seeking the implementation of more effective systemic responses to campus sexual violence.

⁸ 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>

TEQSA's approach to sexual assault and sexual harassment as a sector-wide issue

TEQSA became involved in the issue of sexual violence in higher education following a directive from former Minister Birmingham in August 2017, in response to the Australian Human Rights Commission's *Change the Course* report, that universities report to TEQSA on their response to the report's recommendations.⁹ The results of this exercise were published in TEQSA's January 2019 *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*.¹⁰ My research highlights deficiencies in this process and report, including methodological shortcomings associated with institutional self-reporting, flawed analysis and inappropriate presentation of the Commission's recommendations, and a lack of repercussions for non-compliance.

TEQSA subsequently employed several tools in its regulation of the *Threshold Standards* in relation to campus based sexual violence, including:

- issuing guidance material to the higher education sector,¹¹
- utilising complaints processes,¹²

⁹ Senator the Hon Simon Birmingham (Commonwealth Minister for Education and Training), *University sexual assault and sexual harassment* (Media Release, 1 August 2017)

<https://ministers.dese.gov.au/birmingham/minister-statement-university-sexual-assault-and-sexual-harassment>

¹⁰ TEQSA, *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>

¹¹ TEQSA, *Guidance Note: Wellbeing and Safety* (January 2018, Version 1.2) 8 <https://www.teqsa.gov.au/latest-news/publications/guidance-note-wellbeing-and-safety>; TEQSA, *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>; TEQSA, *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-sexual-harassment-v2-0-web.pdf>

¹² Following the *Change the Course* report TEQSA established a complaints function within TEQSA as a source of regulatory intelligence.

- undertaking registration-related assessments of university policies and protocols concerning the management and reporting of sexual assault and harassment,¹³ and
- assessments arising from material changes notifications.¹⁴

While the former Coalition government identified TEQSA as the most appropriate lead response agency,¹⁵ my research has found that stakeholders across the sector consider TEQSA poorly positioned to lead this work. Among the concerns identified by stakeholders are that the legislated Threshold Standards are a high-level framework that do not mention sexual assault or sexual harassment but have been employed to address a very specific and specialised area of concern; that TEQSA does not possess expertise in sexual violence; and that the agency has been inadequately resourced to lead this work.

Further, despite the array of regulatory tools available in its clearly articulated regulatory approach¹⁶ TEQSA has demonstrated a marked reluctance to employ more coercive mechanisms to drive university compliance with the Threshold Standards as they relate to sexual violence.¹⁷ While other bodies such as the SA ICAC,¹⁸ Tasmanian Ombudsman¹⁹ and ACT Supreme Court²⁰ have all made recent adverse findings regarding the handling of sexual

¹³ Under *TEQSA Act*, Part 3 Div 3, registration and re-registration of higher education providers is one of TEQSA's key regulatory functions. Applications for renewal of registration are considered on a rolling seven-year cycle, with an assessment of compliance with the *Threshold Standards* undertaken when providers apply for renewal of their registration. In June 2018, TEQSA announced that renewals of registration applications would include a core assessment of student wellbeing and safety standards, including institutional responses to issues surrounding the management and prevention of sexual violence: TEQSA, *Wellbeing and safety standards set to be assessed* (Media Release, 4 June 2018).

¹⁴ Under s 29(1) of the *TEQSA Act*, higher education providers must notify TEQSA of events that occur, or risks, that will significantly affect their ability to meet the requirements of the *Threshold Standards*.

¹⁵ The Hon Dan Tehan MP (Commonwealth Minister for Education), *Statement on TEQSA report* (Media Release, 25 January 2019) <https://ministers.dese.gov.au/tehan/statement-teqsa-report>

¹⁶ TEQSA, *Our approach to quality assurance and regulation* <https://www.teqsa.gov.au/our-approach-quality-assurance-and-regulation>

¹⁷ Most notably the student Wellbeing and Safety Standards: Threshold Standards, Standard 2.3.

¹⁸ The Hon Bruce Lancer QC (South Australian Independent Commissioner Against Corruption), *Statement About an Investigation: Misconduct by the Vice-Chancellor of the University of Adelaide* (26 August 2020) <https://icac.sa.gov.au/public-statement/26aug2020>

¹⁹ University of Tasmania – January 2021: Disciplinary process issues' in Ombudsman Tasmania, *Annual Report 2020-2021*, (October 2021) 17-18 https://www.ombudsman.tas.gov.au/data/assets/pdf_file/0004/635800/PDF-OF-OMBUDSMAN-ANNUAL-REPORT-for-website-at-14-October-2021.PDF

²⁰ *SMA v John XXIII College (No 2)* [2020] ACTSC 211; *John XXIII College v SMA* [2022] ACTCA 32.

assault and sexual harassment matters by universities and residential colleges, TEQSA in more than 50 investigations of universities since 2017 (across its complaints, registration assessments and material changes functions) has not judged a single university as non-compliant with the *Threshold Standards* regarding Wellbeing and Safety.

According to information provided by TEQSA in response to Senate Estimates Questions on Notice, between September 2017 and 30 April 2022 TEQSA has assessed university policies, procedures, and responses in relation to sexual assault and sexual harassment on more than 50 occasions through four avenues:

- 24 finalised sexual assault and sexual harassment-related complaints/concerns, with a further seven complaints pending²¹
- eight occasions when TEQSA engaged with five universities in relation to sexual assault and sexual harassment-related matters raised in media reports²²
- 20 assessments of the quality of university sexual assault and sexual harassment prevention and response measures, covering 14 universities²³
- four occasions when universities had notified TEQSA in relation to a matter of concern around sexual assault or sexual harassment.²⁴

While the NSSF results released in March 2022 demonstrated a continuing very concerning level of sexual assault and sexual harassment in university contexts, and highlighted student's lack of confidence in university processes, TEQSA advised in April 2022 that: "No universities have been found non-compliant with the *Threshold Standards* to date. No universities have been subject to enforcement action in relation to sexual assault and sexual harassment-related

²¹ Senate Standing Committees on Education and Employment, Parliament of Australia, *Budget Estimates 2022-23*, Question on Notice SQ22-000203.

²² Senate Standing Committees on Education and Employment, Parliament of Australia, *Budget Estimates 2022-23*, Question on Notice SQ22-000204.

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

²⁴ Senate Standing Committees on Education and Employment, Parliament of Australia, *Budget Estimates 2022-23*, Question on Notice SQ22-000205.

complaints/concerns since September 2017.”²⁵ The strongest sanction applied by TEQSA in the past five years has been monitoring and annual reporting of several universities.

An additional area of concern raised by stakeholders in my research is around TEQSA’s lack of transparency. TEQSA publishes information about the outcomes of any regulatory action or decisions it takes on the National Register of Higher Education Providers, available on the TEQSA website.²⁶ However, where no regulatory action is taken – as has been the case regarding *every* complaint/concern, registration assessment and material change investigation undertaken by TEQSA in the past five years in relation to sexual assault and sexual harassment – there is no record on the register. The practical outcome of these procedures is that current and prospective students and their families, alongside university staff, are unable to ascertain which institutions have been under TEQSA’s scrutiny in relation to complaints or media reports, or which universities have had their policies and procedures in relation to sexual violence assessed by the national regulator.

Together, these factors highlight that TEQSA is ill-equipped to lead regulatory efforts around sexual assault and sexual harassment in Australian universities.

Recommendations

My doctoral research proposes several recommendations around mechanisms that could contribute to a more effective future regulatory framework addressing sexual assault and sexual harassment in Australian university settings: existing legislative and regulatory tools that could be more robustly applied to establish institutional accountability and transparency, as well as some new mechanisms that could be adopted.

²⁵ Senate Standing Committees on Education and Employment, Parliament of Australia, *Budget Estimates 2022-23*, Question on Notice SQ22-000203.

²⁶ *TEQSA Act*, ss 198 and 204.

For the purposes of the Review of Australia's Higher Education System, I urge the Accord Panel to:

1. ensure that sexual violence in university contexts be closely examined within the Review process;
2. determine that the current reliance on self-regulatory approaches, led by universities and residential colleges, requires urgent attention;
3. determine that TEQSA has proven itself ill-equipped to lead regulatory oversight efforts in this area; and
4. support the establishment of independent accountability mechanisms to drive meaningful improvements in the management and prevention sexual assault and sexual harassment in Australian universities.

I have been involved in the development of the proposal for the establishment of an independent expert-led Taskforce (as detailed in Fair Agenda and EROC Australia's submission to the Accord Panel) and recommend that the Accord Panel seriously consider this proposal as a necessary and effective mechanism to drive systemic change in relation to sexual violence in Australian university settings.

Appendix A: 2021 National Student Safety Survey

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%.²⁷

Among the key findings:

- In the past 12 months 1.4% of female students and 0.6% of male students had been sexually assaulted in a university context.²⁸ The most common locations of the most impactful incident of sexual assault were on campus: clubs and societies events or spaces (25.8%); student accommodation or residences (25.3%); at a private home or residences (18.4%); general campus areas (13.5%); hospitality and retail off campus (11.7%)²⁹
- In the past 12 months 10.5% of female students, 14.7% of transgender students, 22.4% of non-binary students and 3.9% of male students had experienced sexual harassment in a university context. Students who live in student accommodation or residences (19%) were more likely to have experienced sexual harassment in the past 12 months.³⁰
- Only 5.6% of students who had experienced sexual assault had made a formal report about their most impactful incident to their university. Of those who reported, 47.5% said their university had explained the reporting or complaints process and 29.7% were satisfied with the process.³¹
- Only 3.0% of students who had experienced sexual harassment had made a formal report about their most impactful incident to their university. Of those who reported sexual harassment incident, 56.1% said their university had explained the reporting or complaints process and 41.3% were satisfied with the process.³²
- Students knew very little or nothing about their university's policy on sexual assault (53.6%) or sexual harassment (51%).³³
- Students knew nothing or very little about where they could seek support or assistance within the university for sexual assault (43.5%) and for sexual harassment (46.7%).³⁴

²⁷ Social Research Centre, *National Student Safety Survey: Report on the prevalence of sexual harassment and sexual assault among university students in 2021*, 13 https://assets.website-files.com/61c2583e4730c0d5b054b8ab/623ba530bc6676dfcdb1d5dc_2021%20NSSS%20National%20Report.pdf

²⁸ *ibid*, 2.

²⁹ *ibid*, 37.

³⁰ *ibid*, 2.

³¹ *ibid*, 3.

³² *ibid*.

³³ *ibid*.

³⁴ *ibid*.