

11 April 2023

Dear Australian Universities Accord Panel,

**Review of Australia’s Higher Education System: Discussion Paper consultation**

Thank you for the opportunity to provide a submission in response to the Australian Universities Accord Panel Discussion Paper.

As a PhD candidate with the Australian Human Rights Institute at the University of NSW, I have recently submitted my doctoral thesis, *Regulatory responses to sexual assault and sexual harassment in Australian university settings*. My research<sup>1</sup> takes a system-wide structural approach to interrogate why there has been little progress in reducing campus sexual violence over the past decade. It attributes these failings, in large part, to an over-reliance on the self-regulating university sector to lead the reform effort and deficiencies in TEQSA’s regulatory approach.

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.”<sup>2</sup>

I would be very happy to expand on the submission for the Panel and can be contacted at [allison.henry@unsw.edu.au](mailto:allison.henry@unsw.edu.au) or [REDACTED].

Yours sincerely,

[REDACTED]

Allison Henry  
*PhD Candidate, Australian Human Rights Institute*  
*Faculty of Law & Justice, UNSW Sydney*

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<sup>1</sup> 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.

<sup>2</sup> Indira Rosenthal and Robin Banks, *An Initial Review of Sexual Assault and Sexual Harassment Prevention and Response at the University of Tasmania* (March 2018), p.3, [http://www.utas.edu.au/\\_data/assets/pdf\\_file/0009/1115982/SASH-Review-Report-Final-23-April-2018-002.pdf](http://www.utas.edu.au/_data/assets/pdf_file/0009/1115982/SASH-Review-Report-Final-23-April-2018-002.pdf).

## EXECUTIVE SUMMARY: SEXUAL VIOLENCE IN AUSTRALIAN UNIVERSITY

### SETTINGS

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, the Australian Human Rights Commission's landmark *Change the Course* report,<sup>3</sup> 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 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 effort, the release of the the 2021 National Student Safety Survey (NSSS) in March 2022<sup>4</sup> 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.

The NSSS, commissioned by Universities Australia on behalf of its 39 member universities, found that, in the preceding 12 months,

- 1.4% of female students and 0.6% of male students had been sexually assaulted in a university context.<sup>5</sup>

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<sup>3</sup> 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>>.

<sup>4</sup> 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](https://assets.website-files.com/61c2583e4730c0d5b054b8ab/623ba530bc6676dfcdb1d5dc_2021%20NSSS%20National%20Report.pdf)

<sup>5</sup> *ibid*, p.2.

- 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.<sup>6</sup>

The NSSS demonstrated that students lacked confidence in their institutions' handling of sexual violence. Just 3% of students subjected to sexual harassment and 5.6% of students subjected to sexual assault had made a formal report or complaint to their university,<sup>7</sup> a deterioration from 2016 when the comparable reporting rates in *Change the Course* were still a troubling 6% and 13% respectively. Of those who reported sexual harassment in 2021, only 41.3% were satisfied with the university's process.<sup>8</sup> For those reporting sexual assault, this figure dropped to 29.7%.<sup>9</sup> These figures indicate thousands of students are not seeking out or receiving the support they need following distressing incidents.

Furthermore, more than half of students participating in the survey knew "very little or nothing" about their university's sexual assault and harassment policies and almost as many knew "nothing or very little" about where they could seek support or assistance within the university.<sup>10</sup>

Beyond these high-level institutional findings, it is important to acknowledge the impact of sexual assault, sexual harassment and institutional betrayal on individual student survivors of sexual violence.

The individual impact includes long term health consequences such as unwanted pregnancy, sexually transmitted diseases, anxiety, depression, social isolation, substance abuse disorders

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<sup>6</sup> *ibid*, p.2.

<sup>7</sup> *ibid*, p.3.

<sup>8</sup> *ibid*.

<sup>9</sup> *ibid*.

<sup>10</sup> The NSSS found that students knew very little or nothing about their university's policy on sexual assault (53.6%) or sexual harassment (51%) and 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%): *ibid*, p.3.

and self-harming behaviours.<sup>11</sup> 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.<sup>12</sup>

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 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.<sup>13</sup>

Student safety and freedom from sexual violence is an essential pre-requisite to any discussion of the future Australian higher education sector.

This submission is directed at questions 5, 36, 39 and 40 in the Discussion Paper.

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<sup>11</sup> In the Australian context see, for example, *Change the Course* 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.

<sup>12</sup> 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).

<sup>13</sup> *Connecting the dots*, 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.

I have drawn on my doctoral research to:

- a) detail regulatory failures in the Australian university sector which are compromising student safety and wellbeing and undermining the ability of all Australian university students to have a quality student experience; and
- b) suggest regulatory and governance reforms that would enable the higher education sector to better meet contemporary demands, most particularly to ensure all students are physically safe while studying.

## **Q5 – HOW DO THE CURRENT STRUCTURES OF INSTITUTIONS, REGULATION AND FUNDING IN HIGHER EDUCATION HELP OR HINDER AUSTRALIA’S ABILITY TO MEET THESE CHALLENGES? WHAT NEEDS TO CHANGE?**

The Accord Panel’s Discussion Paper outlines a number of challenges and opportunities facing Australia’s higher education system, including meeting existing and future skills, knowledge and expertise needs in a way that fosters Australia’s diversity and democracy and embraces sustainable and technologically advances; contributing to a more innovative and productive economy and building our international reputation “as an attractive destination for people, business and investment.”<sup>14</sup>

A pre-requisite for the Australian higher education system meeting these future challenges and opportunities is that our university sector can, first and foremost, provide a safe learning environment for students.

The Australian university sector’s ability to meet this core objective in relation to its management and prevention of sexual violence is not only hindered but actively undermined by the current legislative, regulatory and funding arrangements underpinning the Australian higher education system in three key ways:

1. Legislative complexity makes it difficult to navigate the higher education system at both an individual level (for student survivors of sexual violence, seeking assistance and redress) and at a systemic level (seeking institutional reforms to improve the management and prevention of campus sexual violence).
2. The self-regulating nature of Australian universities and residential colleges limits the levers available to enforce change at an institutional level.
3. TEQSA’s failed regulatory approach to sexual violence in higher education.

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<sup>14</sup> Australian Government, *Australian University Accord Discussion Paper*, February 2023, pp. 9-11.

## Legislative complexity

In the context of managing and preventing sexual violence in Australian university settings, the complexities of Australia's federal constitutional system impact on both the legislative and policy framework dealing with sexual assault and sexual harassment in Australia and the legislative, funding and regulatory frameworks underpinning the Australian university sector.

### ***Legislative and policy framework for addressing sexual assault and sexual harassment in Australia***

Reflecting Australia's federal system, the legislative and policy frameworks with respect to sexual assault and sexual harassment in Australia are a combination of national and State and Territory approaches. Sexual assault and associated offences such as indecent assault is criminalised in State and Territory legislation.<sup>15</sup> Sexual harassment is unlawful under the Commonwealth *Sex Discrimination Act 1984* (Cth) with section 28F specifically prohibiting sexual harassment in educational institutions including universities, and States and Territories have analogous provisions in their anti-discrimination or equal opportunity legislation.<sup>16</sup>

The policy framework aiming to reduce and prevent sexual violence in the Australian community is similarly a fusion of national and State and Territory strategies, including the *National Plan to Reduce Violence against Women and their Children 2022–2032* and various State and Territory strategies.<sup>17</sup> While some of these strategies make brief references to

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<sup>15</sup> *Crimes Act 1900* (NSW) s 611; *Crimes Act 1958* (Vic) s 38; *Criminal Code 1899* (Qld) s 349; *Criminal Law Consolidation Act 1935* (SA) s 4; *Criminal Code Act 1924* (Tas) s 185; *Crimes Act 1900* (ACT) s 54; *Criminal Code* (NT) s 192; *Criminal Code* (WA) s 325.

<sup>16</sup> *Anti-Discrimination Act 1977* (NSW) Part 2A; *Equal Opportunity Act 2010* (Vic) Part 6; *Anti-Discrimination Act 1991* (Qld) Ch 3; *Equal Opportunity Act 1984* (WA) Part 2 Div 4; *Equal Opportunity Act 1985* (SA) s 87; *Anti-Discrimination Act 1998* (Tas) s 17; *Discrimination Act 1991* (ACT) Part 5; *Anti-Discrimination Act* (NT) s 22.

<sup>17</sup> See, for example, Queensland Government, Department of Child Safety, Youth and Women, *Prevent. Support. Believe. Queensland's framework to address sexual violence* (undated) <https://www.publications.qld.gov.au/dataset/sexual-violence-prevention/resource/a22ad633-8529-4ab7-99d6-549fec75e709>; South Australian Government, Office for Women, *Committed to Safety: A framework for addressing domestic, family and sexual violence in South Australia* (undated) [https://officeforwomen.sa.gov.au/\\_data/assets/pdf\\_file/0007/78604/Committed-to-Safety.pdf](https://officeforwomen.sa.gov.au/_data/assets/pdf_file/0007/78604/Committed-to-Safety.pdf); Northern Territory Government, *Northern Territory's Sexual Violence Prevention and Response Framework 2020-2028* (undated) [https://territoryfamilies.nt.gov.au/\\_data/assets/pdf\\_file/0004/816961/sexual-violence-response-framework-2020-2028.pdf](https://territoryfamilies.nt.gov.au/_data/assets/pdf_file/0004/816961/sexual-violence-response-framework-2020-2028.pdf).

working with universities to reduce sexual violence, universities and residential colleges appear to have inexplicably been placed outside the focus of these government frameworks.<sup>18</sup>

The effective omission of university settings from the national policy frameworks addressing sexual violence brings into closer focus the legislative, funding and regulatory framework governing the university sector.

### ***Legislative, funding and regulatory framework underpinning the Australian university sector***

As the Accord Panel's Discussion Paper makes clear, responsibilities for governing, regulating and funding Australia's university sector are shared between different levels of government.

#### *State and Territory legislation impact universities and residential colleges*

State and Territory statutes<sup>19</sup> provide for the governance arrangements of individual universities and grant extensive powers to university governing bodies (usually a Council or Senate) to enact subordinate legislation such as university statutes, regulations and by-laws which provide the basis for university policies and rules. While many of the statutes provide for annual reporting through the Minister to the Parliament, Ministerial involvement in appointments to the governing bodies, and Ministerial approvals around particular matters such as property acquisition, these statutes serve to emphasise how operational arrangements are largely left to the individual institutions.

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<sup>18</sup> The second National Plan, released on 17 October 2022, makes brief reference to universities, relevantly stating that "Workplaces and educational settings, including universities, should integrate intervention initiatives to reduce, prevent and respond appropriately to sexual harassment and violence.": Commonwealth Department of Social Services, *National Plan to End Violence against Women and Children 2022-2032: a joint Australian, state and territory government initiative* (October 2022) p.82  
[https://www.dss.gov.au/sites/default/files/documents/10\\_2022/national\\_plan\\_accessible\\_version\\_for\\_website.pdf](https://www.dss.gov.au/sites/default/files/documents/10_2022/national_plan_accessible_version_for_website.pdf).

<sup>19</sup> 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.



Residential colleges affiliated or otherwise connected with universities – highlighted in both the *Change the Course* and NSSS surveys as a key location for campus sexual violence<sup>20</sup> – are subject to substantially less legislative attention and regulatory oversight. The more than 220 residential colleges 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 authority<sup>21</sup> but in many cases, residential colleges appear to have no legislative basis.<sup>22</sup> The governance and operational arrangements for residential colleges also vary greatly within individual university eco-systems and across Australian jurisdictions. 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.

Australia’s public universities are subject to the oversight of their respective State and Territory’s independent audit, Ombudsman and anti-corruption legislation and agencies, and as individual corporate entities universities and residential colleges are also required to abide by State and Territory work, health and safety (WHS), anti-discrimination and criminal statutes. These statutes, and the State and Territory agencies that administer them, also represent potential avenues for student survivors to pursue beyond their university or residential college.

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<sup>20</sup> The NSSS found 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: 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.

<sup>21</sup> 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).

<sup>22</sup> In addition, the commercial accommodation businesses which have emerged in more recent years, such as IGLU, UniLodge, Urbanest, largely operate as independent corporate entities.

Students subjected to sexual violence in university settings may choose to pursue a criminal complaint through relevant State and Territory police and criminal justice systems. While there are jurisdictional differences as to definitions, coverage and procedural matters, there is capacity for students to make individual complaints of discrimination or harassment to relevant local agencies<sup>23</sup> under State and Territory anti-discrimination and equal opportunity statutes.<sup>24</sup> Individual students, after they exhaust processes at their university, can complain to their respective Ombudsman offices about maladministration on the part of their university – for example, if they believe a university’s policies or procedures are flawed or unfair. WHS compliance measures have not, to date, been broadly pursued by survivors and advocates in relation to sexual violence in university settings, or indeed by workers experiencing sexual harassment more generally. However, the Australian Human Rights Commission’s *Respect@Work* report in March 2020 contended that the WHS framework, while having potential to address sexual harassment, was “currently underutilised.”<sup>25</sup>

#### *Commonwealth legislation funding and regulating Australia’s higher education sector*

The Commonwealth government possesses a range of funding and regulatory powers over universities, primarily through the *Higher Education Support Act 2003* (Cth) (*HESA*)<sup>26</sup> and the *Tertiary Education Quality and Standards Agency Act 2011* (Cth) (*TEQSA Act*),<sup>27</sup> but these levers are detached from the governance frameworks for universities provided under State and Territory legislation. Over the past two decades successive Commonwealth governments have

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<sup>23</sup> Human Rights Commission (ACT), Anti-Discrimination Board (NSW), Anti-Discrimination Commission (NT), Anti-Discrimination Commission (Qld), Equal Opportunity Commission (SA), Anti-Discrimination Commission (Tas), Equal Opportunity & Human Rights Commission (Vic), Equal Opportunity Commission (WA).

<sup>24</sup> In addition, students may complain to the Australian Human Rights Commission under the *Sex Discrimination Act 1984* (Cth). Where unlawful sexual harassment has occurred under both federal and a State or Territory law, a person may choose to pursue action under either federal or State or Territory legislation, but not both.

<sup>25</sup> Australian Human Rights Commission, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (March 2020), p.550, <https://humanrights.gov.au/our-work/sex-discrimination/publications/respectwork-sexual-harassment-national-inquiry-report-2020>.

<sup>26</sup> *HESA* provides the legislative basis for funding Australia’s higher education providers, including universities, and providing loans to students.

<sup>27</sup> The *TEQSA Act* provides for the registration, accreditation and regulation of Australia’s higher education providers, including universities.

regularly utilised the *HESA* as a mechanism to drive policy and political objectives<sup>28</sup> but, to date, the *HESA* has not been used to make Commonwealth government funding contingent on strengthened university policies and practices in relation to campus sexual violence. As discussed further below, TEQSA has been drawn into this area, but its efforts have been constrained by an apparent reluctance to employ the full range of regulatory tools at its disposal.

Residential colleges receive no direct funding from the Commonwealth government and are not subject to either the *HESA* or the *TEQSA Act*, meaning that the Commonwealth government lacks funding and regulatory levers to influence operations within these institutions.

### ***Legislative complexity impedes effective action against campus sexual violence***

When considering the issue of campus sexual violence, this legislative complexity makes it difficult to navigate the higher education system at both an individual and systemic level.

Widely recognised challenges experienced by individual survivors in traversing the legal avenues for reporting sexual assault and sexual harassment are compounded in the higher education sector. As the Accord Panel's Discussion Paper itself states:

The Panel heard that there are challenges for students who have issues they wish to pursue. Confusion around the roles and remit of consumer protection laws, the ombudsman, the Human Rights Commission and TEQSA, as well as different pathways for international students, can make the system hard to navigate.<sup>29</sup>

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<sup>28</sup> For instance, in 2005, the Howard Coalition Government tied funding under the Act with requirements that higher education providers meet the Higher Education Workplace Relations Requirements and the National Governance Protocols as a condition of Commonwealth Grant Scheme funding (see the *Higher Education Legislation Amendment (Workplace Relations Requirements) Act 2005* (Cth)), a requirement later removed by the Rudd Labor Government (see the *Higher Education Support Amendment (Removal of the Higher Education Workplace Relations Requirements and National Governance Protocols Requirements and Other Matters) Act 2008* (Cth)). Policies such as compulsory student services and amenities fees (see the *Higher Education Legislation Amendment (Student Services and Amenities) Act 2011* (Cth)), an emphasis on 'job ready graduates' (see the *Higher Education Support Amendment (Job-Ready Graduates and Supporting Regional and Remote Students) Act 2020* (Cth)) and freedom of speech (see the *Higher Education Support Amendment (Freedom of Speech) Act 2021* (Cth)) have similarly been driven through amendments to the *HESA*.

<sup>29</sup> *Australian University Accord Discussion Paper, op cit*, p.31.

When students who have been subjected to sexual violence seek redress beyond the administrative or disciplinary mechanisms offered by their university, residential college and/or the criminal justice system, they require an awareness and understanding of the myriad complaint options available under anti-discrimination or equal opportunity statutes, WHS frameworks, TEQSA and Ombudsman complaints procedures – and the time, resources and support required to pursue these avenues.

The complex and fragmented legislative framework for governing, funding and regulating Australia's university sector, characterised by multi-level governance and split responsibilities, and coupled with considerable jurisdictional differences in State and Territory legislation in relation to governance arrangements covering universities and residential colleges, has also challenged the adoption of systemic and nationally consistent approaches to addressing campus sexual violence.

Some State and Territory governments have in recent years occasionally drawn on their legislative authority over universities in their jurisdiction to address campus sexual violence, but these interventions have served to symbolically signal an interest in campus sexual violence rather than instigate real action to address the drivers or impact of such violence.<sup>30</sup> There have been episodic investigations by State and Territory oversight bodies that have touched on the issue of campus sexual violence but these interventions have rarely provided a basis for

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<sup>30</sup> For example, the then WA Minister for Education in March 2016 raised the issue of sexual violence with local Vice Chancellors at the Western Australian Higher Education Committee (WAHEC); universities in Western Australia subsequently submitted progress reports against the *Change the Course* recommendations to the Minister via WAHEC in July and November 2018: Edith Cowan University, *Respect.Now.Always. Plan Progress* (updated April 2021) [https://www.ecu.edu.au/\\_data/assets/pdf\\_file/0006/931479/ECU-Respect.-Now.-Always.-Plan-2017-2021-Progress-update.pdf](https://www.ecu.edu.au/_data/assets/pdf_file/0006/931479/ECU-Respect.-Now.-Always.-Plan-2017-2021-Progress-update.pdf). In the ACT it was reported, following the release of the *Change the Course* report, that the Chief Minister would discuss high rates of sexual assault and harassment among Canberra university students at an upcoming Vice Chancellors' Forum and that the Coordinator-General for Family Safety would work with universities to improve safety for students: Emily Baker, 'ACT government to discuss university sexual assaults with ANU, UC heads', *Canberra Times*, 4 August 2017, <https://www.canberratimes.com.au/story/6029792/act-government-to-discuss-university-sexual-assaults-with-anu-uc-heads/>.

systemic reform.<sup>31</sup> Any potential interest that State and Territory governments' may have had in addressing sexual violence in residential colleges has been impeded by their lack of direct influence over residential colleges.<sup>32</sup>

While the former Coalition government adopted robust policy, legislative, funding and regulatory responses to systemic higher education issues such as contract cheating and foreign interference, there was no similar political will to tackle campus sexual violence. Rather, the former Coalition government was content to largely leave the Australian university sector's response to the alarming findings of sexual violence in the *Change the Course* report to individual institutions and their respective peak bodies, Universities Australia and University Colleges Australia, with what proved to be cursory oversight provided by the national higher education regulator, TEQSA (as discussed further below).

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<sup>31</sup> See, for example, 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>; Tasmanian Audit Office, *Report of the Auditor-General No. 2 of 2019-20: University of Tasmania's management of student accommodation* (October 2019) <https://www.audit.tas.gov.au/wp-content/uploads/Report-of-the-Auditor-General-No2-of-2019-20-UTAS-management-of-student-accommodation.pdf>; '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](https://www.ombudsman.tas.gov.au/data/assets/pdf_file/0004/635800/PDF-OF-OMBUDSMAN-ANNUAL-REPORT-for-website-at-14-October-2021.PDF); NSW Ombudsman, *Complaints about the supervision of postgraduate students* (Discussion paper, October 2017) <https://apo.org.au/sites/default/files/resource-files/2017-10/apo-nid126861.pdf>.

<sup>32</sup> For example, in June 2017, in response to a sexism scandal at one of the University of Sydney colleges, it was reported by *The Sydney Morning Herald* that the former NSW Minister for Education the Hon Rob Stokes had requested departmental advice on the options available to the NSW government to amend or repeal the various Acts governing university colleges: Pallavi Singhal, 'Rob Stokes considers overhaul of university college laws as St Paul's attempts to join review', *The Sydney Morning Herald* (online, 2 June 2017) <https://www.smh.com.au/education/rob-stokes-introduces-changes-to-archaic-sydney-university-college-laws-20171122-gzql3d.html>. The limits of the Minister's powers may have been exposed in November 2017 when, in introducing the *Saint John's College Bill 2017* (NSW), Minister Stokes noted that "The 1857 Act is a private Act, an increasingly rare breed in the New South Wales legislative canon" and concluded his speech "with the obvious point that this is a bill to amend a private Act. My role is therefore to act, as it were, as an agent for the college, which requested governance reform after an extensive period of consultation and reflection.": New South Wales, *Parliamentary Debates (Second Reading Speech, Saint John's College Bill 2017)*, Legislative Assembly, 22 November 2017 (Rob Stokes, Minister for Education).

## **Self-regulating nature of university sector undermines transparency and accountability**

As outlined above, the legislative framework underpinning the Australian university sector explicitly endorses the autonomous and self-regulating nature of universities<sup>33</sup> and residential colleges, a position roundly endorsed by both federal and State governments:

Universities are independent organisations, fully responsible for their actions.<sup>34</sup>

The Hon Dan Tehan MP, Former Commonwealth Minister for Education

... university governing bodies have statutory responsibility over their own institutions...  
universities are essentially independent, autonomous corporate bodies.<sup>35</sup>

The Hon Adrian Piccolo, Former NSW Minister for Education

Following the 2017 *Change the Course* report, Australian universities and residential colleges began to take steps to address sexual violence within their 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 doctoral research has established 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 and

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<sup>33</sup> Section 2-1 of the Higher Education Support Act 2003 (Cth) states that “universities are established under laws of the Commonwealth, the States and the Territories that empower them to achieve their objectives as autonomous institutions through governing bodies that are responsible for both the university’s overall performance and its ongoing independence ...”

<sup>34</sup> 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>

<sup>35</sup> New South Wales, *Parliamentary Debates (Second Reading Speech, Universities Legislation Amendment (Regulatory Reforms) Bill 2014)*, Legislative Assembly, 19 March 2014 (Adrian Piccolo, Minister for Education).

residential colleges have been proactive in reporting on their efforts, and how they are managing sexual violence reports,<sup>36</sup> but most have not been transparent, and assessing whether universities and colleges have actually delivered on their commitments can be incredibly difficult. While the Australian Human Rights Commission<sup>37</sup> and TEQSA<sup>38</sup> compiled some of this information about universities in a systemic (albeit methodologically flawed<sup>39</sup>) manner between 2017 and 2020, there have been no systemic oversight efforts of universities in more recent years and tracking action and progress across residential colleges is virtually impossible.

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 good practice and are constructively contributing to student safety and wellbeing. The peak bodies for universities and residential colleges, Universities Australia and Universities Colleges Australia, have led work in this area under their *Respect.Now.Always.* and *Cultural Renewal* campaign banners, producing sector wide guidance for their members.<sup>40</sup> However, given the

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<sup>36</sup> 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>.

<sup>37</sup> Australian Human Rights Commission, *Audit of university responses to Change the course report – Audit 2017* (December 2017) <https://www.humanrights.gov.au/audit-2017>; Australian Human Rights Commission, *Audit of university responses to the Change the course report Snapshot of progress: August 2018* (1 August 2018) <https://humanrights.gov.au/our-work/sex-discrimination/audit-2018>; Australian Human Rights Commission, *Change the course – 18 month milestone* (14 May 2019) <https://humanrights.gov.au/our-work/sex-discrimination/change-course-18-month-milestone>; Australian Human Rights Commission, *Change the course – 3 year milestone* (27 October 2020) <https://humanrights.gov.au/our-work/sex-discrimination/change-course-3-year-milestone-2020>.

<sup>38</sup> 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>.

<sup>39</sup> My doctoral research highlighted deficiencies in these reports, 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.

<sup>40</sup> See, for example, Universities Australia, *Guidelines for University Responses to Sexual Assault and Sexual Harassment* (20 July 2018) <https://www.universitiesaustralia.edu.au/Media-and-Events/media-releases/Students->

independent and self-regulating status of universities and residential colleges, the two peaks have no authority to compel or enforce the adoption of good practice guidance by their members. Furthermore, neither peak body has monitored or evaluated the implementation of their sector-wide guidance or resources.

The NSSS results, which indicated that there has been no substantive improvement in the prevalence of campus sexual violence between 2016 and 2021, demonstrated that the self-regulating efforts of universities, residential colleges and their peak bodies have not worked. 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.

Most concerning, the peak bodies and individual universities and residential colleges do not appear to have a forward plan. Unlike the release of the *Change the Course* report in 2017, UA had no Action Plan for next steps and there has been no commitment from the university sector, since the NSSS's release, for a further survey.

### **TEQSA's regulatory efforts offer illusions of accountability rather than genuine systemic reform**

While universities have claimed that they have overhauled their approach to campus sexual violence there has been no effective systemic oversight and accountability measures in place to ensure that universities are implementing the changes that they have committed to, or to ensure that they are good practice.

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[at-the-centre--new-guidelines-for-university-responses-to-sexual-harassment-and-sexual-assault#.XPMUjy2B1p9;](https://www.universitiesaustralia.edu.au/wp-content/uploads/2018/10/Postgraduate-Principles.pdf) Universities Australia, National Tertiary Education Union, Council of Australian Postgraduate Associations Incorporated and Australian Council of Graduate Research, *Principles for Respectful Supervisory Relationships* (1 August 2018) <https://www.universitiesaustralia.edu.au/wp-content/uploads/2018/10/Postgraduate-Principles.pdf>; University Colleges Australia, 'Respectful Relations – Response and Resources Advisory Group', *E-news*, (June 2018) <https://universitycollegesaustralia.edu.au/wp-content/uploads/2018/06/UCA-Communique-21-June-2018-copy-01.html>.



Despite its lack of specialised expertise in sexual violence, and without the allocation of additional funding or resources, the national higher education regulator TEQSA was identified by the former Coalition government as the most appropriate agency to oversee the Australian university sector's response to the *Change the Course* report.<sup>41</sup>

While TEQSA has undertaken a range of activities in this area since 2017, my doctoral research has found that stakeholders across the sector consider TEQSA poorly positioned and ill-equipped to lead this work. Among the key issues identified include:

- TEQSA's failure to hold universities accountable
- the lack of compulsion on universities to adopt TEQSA guidance
- TEQSA's apparent reluctance to escalate its regulatory responses
- the adverse impact of TEQSA's complaints processes on student survivors
- the lack of transparency around TEQSA's regulatory investigations
- TEQSA's episodic management of incidents, which has enabled universities to deflect responsibility and suppress systemic responses.

***TEQSA is failing to hold Australian universities accountable around their management of sexual assault and sexual harassment***

TEQSA's initial efforts around campus sexual violence entailed the agency compiling information about university responses to the *Change the Course* recommendations, the results of which 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*.<sup>42</sup> As detailed in the report's methodology, TEQSA relied heavily on universities

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<sup>41</sup> 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>; Tehan, *Statement on TEQSA report*, *op cit*.

<sup>42</sup> TEQSA, *Report to the Minister*, *op cit*.

self-reporting their own actions in compiling the *Report to the Minister*.<sup>43</sup> There is no mention in the report of any attempts by TEQSA to check or validate university submissions; nor is there any mention in the methodology of TEQSA consulting with experts in assessing university responses. When discrepancies were raised soon after the release of the report, TEQSA acknowledged but appeared to dismiss concerns about inconsistencies which had emerged, stating “TEQSA is aware that there are discrepancies between the self-reported actions and the findings of the independent experts.”<sup>44</sup> TEQSA updated the summary Tables in the Appendices to its January 2019 report in July 2020 but it has not otherwise undertaken any systemic review of how universities are managing or preventing sexual violence.

Responding to the release of the NSSS findings in March 2022, TEQSA issued a statement registering their concern but seemingly distancing themselves from the sector it purportedly regulates: “Like many in the sector and wider community, TEQSA is concerned that university students are continuing to experience sexual assault or sexual harassment while studying...”<sup>45</sup> In the year since, there is no indication that TEQSA has proactively sought to interrogate the NSSS findings or encourage universities to improve their responses. An attentive regulator, it is suggested, might have looked into why the NSSS found that less than half of current students know about their university’s policies on sexual assault and sexual harassment or where to seek support or assistance within their universities and realised that at least 10 Australian universities still locate this critical information under Universities Australia’s “Respect.Now.Always” campaign banner. The “Respect.Now.Always” campaign was launched in February 2016, when most current first year university students were in Year 6 – it is

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<sup>43</sup> Following 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.”: *TEQSA Report to the Minister*, *ibid*, Appendix A.

<sup>44</sup> Senate Standing Committees on Education and Employment, Parliament of Australia, *Additional Estimates 2018-19*, Question on Notice SQ19-000078.

<sup>45</sup> Tertiary Education Quality and Standards Agency, *TEQSA statement: National Student Safety Survey (2021)* (Media Release, 24 March 2022) <https://www.teqsa.gov.au/about-us/news-and-events/latest-news/teqsa-statement-national-student-safety-survey-2021>.

meaningless framing for students who, after being subjected to sexual violence, are seeking information and help.

Given that student submissions to the NSSS called for greater transparency around university disciplinary action – recommending “that there be visible and proportionate disciplinary action for perpetrators to show that universities take sexual harassment and sexual assault reports seriously”<sup>46</sup> – TEQSA could also have been proactive in encouraging universities to publish greater information about the way they handle complaints about sexual assault and sexual harassment. Currently, less than a quarter of Australia’s universities have collated and published information on their websites about sexual violence reports and disclosures or subsequent disciplinary actions.<sup>47</sup>

### ***TEQSA’s ineffective enforcement of the Threshold Standards***

In addition to TEQSA’s regulatory functions around registration of higher education providers and accreditation of courses, the *TEQSA Act* provides broad powers for TEQSA’s administration of the *Threshold Standards*.<sup>48</sup> The *Threshold Standards* are made by the Education Minister by legislative instrument<sup>49</sup> 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. Standards of relevance to managing and preventing sexual assault and sexual harassment at universities are those relating to the learning environment, which encompass issues relating to Wellbeing and Safety (Standard 2.3), and Student Grievances and Complaints (Standard 2.4).

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<sup>46</sup> 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](https://assets.website-files.com/61c2583e4730c0d5b054b8ab/623ba52f5687af0a108ac8ae_2021%20NSSS%20Qualitative%20Report.pdf)

<sup>47</sup> Australian National University, Macquarie University, UTS, UNSW, University of Tasmania, Swinburne University, University of Melbourne and Curtin University.

<sup>48</sup> *TEQSA Act*, Part 5 – Higher Education Standards Framework.

<sup>49</sup> *TEQSA Act*, s 58(1).

TEQSA 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,<sup>50</sup>
- utilising complaints processes,<sup>51</sup>
- undertaking registration-related assessments of university policies and protocols concerning the management and reporting of sexual assault and harassment,<sup>52</sup> and
- assessments arising from material changes notifications.<sup>53</sup>

Stakeholders interviewed for my doctoral research acknowledged that the *Threshold Standards* were a high-level regulatory framework which did not mention sexual assault or sexual harassment but had 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. Nonetheless they were frustrated and disappointed by what they perceived as ineffective enforcement of the available Standards through these regulatory mechanisms.

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<sup>50</sup> 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](https://www.teqsa.gov.au/sites/default/files/good-practice-note-preventing-responding-sexual-assault-sexual_harassment-v2-0-web.pdf)

<sup>51</sup> Following the *Change the Course* report TEQSA established a complaints function within TEQSA as a source of regulatory intelligence.

<sup>52</sup> 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).

<sup>53</sup> 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*.

### *TEQSA guidance materials*

While TEQSA has published guidance for higher education providers around the management and prevention of sexual assault and sexual harassment, there is no compulsion on universities to adopt this guidance, and no accountability for those institutions who choose to ignore it. This is made explicitly clear in the preamble to the *Guidance Notes* which states that “Providers should note that Guidance Notes are intended to provide guidance only. They are not definitive or binding documents. Nor are they prescriptive.”<sup>54</sup> Similarly, TEQSA’s *Good Practice Note* prominently states that “the guidelines for good practice are not regulatory requirements for higher education providers but, rather, seek to illustrate best practice examples” and that “each provider should respond appropriately in the context of their institution.”<sup>55</sup>

### *Complaints, registration assessments and material changes functions*

TEQSA has utilised complaints processes and assessments associated with university registrations and notifications of material changes to serve as compliance checks on universities and assess whether universities are abiding by the high-level requirements in the *Threshold Standards*. Senate 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<sup>56</sup>
- 12 occasions when TEQSA engaged with seven universities in relation to sexual assault and sexual harassment-related matters raised in media reports<sup>57</sup>
- 20 assessments of the quality of university sexual assault and sexual harassment prevention and response measures, covering 14 universities (between TEQSA’s June

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<sup>54</sup> *Guidance Note: Wellbeing and Safety, op cit; Guidance Note: Grievance and Complaint, op cit.*

<sup>55</sup> *TEQSA Good Practice Note, op cit, p.2.*

<sup>56</sup> Senate Standing Committees on Education and Employment, Parliament of Australia, *Budget Estimates 2022–2023*, Question on Notice SQ22-000390.

<sup>57</sup> *ibid.*

2018 announcement that registration applications would include a core assessment of student wellbeing and safety standards and its abandonment of this practice in 2021)<sup>58</sup>

- Five occasions when universities had notified TEQSA in relation to a matter of concern around sexual assault or sexual harassment.<sup>59</sup>

In accordance with the *TEQSA Act* and its enforced self-regulatory approach, TEQSA has a range of regulatory tools available to utilise if it finds a provider non-compliant with the *Threshold Standard*, including administrative sanctions such as shortening or cancelling the period of an accredited course or a provider's registration;<sup>60</sup> civil penalty provisions;<sup>61</sup> infringement notices;<sup>62</sup> enforceable undertakings;<sup>63</sup> and injunctions.<sup>64</sup>

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

This incongruity was highlighted shortly after the NSSS results were released in March 2022, demonstrating continuing and alarming levels of sexual assault and sexual harassment in university contexts, and highlighting student's lack of confidence in university processes. TEQSA in April 2022 advised that: "No universities have been found non-compliant with the *Threshold*

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<sup>58</sup> Senate Standing Committees on Education and Employment, Parliament of Australia, *Budget Estimates 2022-23*, Question on Notice SQ22-000173.

<sup>59</sup> Question on Notice SQ22-000390, *op cit*.

<sup>60</sup> *TESQA Act*, Part 7 Div 1 – Administrative sanctions.

<sup>61</sup> *TESQA Act*, Part 7 Div 5 – Civil penalty provisions.

<sup>62</sup> *TESQA Act*, Part 7 Div 6 – Infringement notices.

<sup>63</sup> *TESQA Act*, Part 7 Div 7 – Enforceable undertakings.

<sup>64</sup> *TESQA Act*, Part 7 Div 8 – Injunctions.

*Standards* to date. No universities have been subject to enforcement action in relation to sexual assault and sexual harassment-related complaints/concerns since September 2017.”<sup>65</sup>

By contrast, during this same period other bodies such as the SA ICAC,<sup>66</sup> the Tasmanian Ombudsman<sup>67</sup> and the ACT Supreme Court<sup>68</sup> have all made adverse findings regarding the handling of sexual assault and sexual harassment matters by universities and residential colleges.

### ***TEQSA’s complaints processes re-traumatise student survivors***

Stakeholders interviewed for my research described TEQSA’s complaints mechanisms around sexual assault and sexual harassment as “very onerous”: highly technical processes which unfairly placed the onus on individual survivors and their advocates to drive the process. Stakeholders reported that prolonged delays in the finalisation of TEQSA 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. For example, a complaint lodged with TEQSA by End Rape on Campus Australia on behalf of a former student of the Queensland University of Technology in October 2019 was not finalised until June 2021.<sup>69</sup> On this occasion the student had spent almost two years seeking resolution of the matter with their university before complaining to TEQSA.

Student advocates reported that TEQSA provided scant information to student complainants at the conclusion of their often-prolonged investigations, leaving survivors disillusioned with the

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<sup>65</sup> Senate Standing Committees on Education and Employment, Parliament of Australia, *Budget Estimates 2022-23*, Question on Notice SQ22-000203.

<sup>66</sup> The Hon Bruce Langer 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>.

<sup>67</sup> 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](https://www.ombudsman.tas.gov.au/data/assets/pdf_file/0004/635800/PDF-OF-OMBUDSMAN-ANNUAL-REPORT-for-website-at-14-October-2021.PDF).

<sup>68</sup> *SMA v John XXIII College (No 2)* [2020] ACTSC 211; *John XXIII College v SMA* [2022] ACTCA 32.

<sup>69</sup> Senate Standing Committees on Education and Employment, Parliament of Australia, *Budget Estimates 2021–2022*, Question on Notice SQ21-000551.

outcomes. These stakeholders reported that they have lost confidence in TEQSA and now “don’t feel comfortable” directing students to TEQSA with sexual violence complaints.

***TEQSA is withholding information from the students it is legislated to protect***

TEQSA’s lack of transparency has also been highly problematic. TEQSA publishes information about the outcomes of any regulatory action or decisions it takes on the National Register of Higher Education Providers on its website. However, where TEQSA takes no regulatory action – as has been the case regarding every complaint/concern, every registration assessment and every material change investigation undertaken by TEQSA since 2017 in relation to sexual assault and sexual harassment – there is no record on the register.

Furthermore, while acknowledging that several universities have been the subject of multiple complaints, in recent Question on Notice responses to the Senate Education and Employment Legislation Committee, TEQSA has refused (without explanation) to name the universities who have been subject to their complaints / concerns processes.

The practical outcome of TEQSA’s lack of transparency is that student safety and well-being, alongside institutional accountability, is compromised: current and prospective students and their families, alongside university staff and governments, are unable to ascertain which institutions have been under TEQSA’s scrutiny in relation to multiple complaints or media reports, or which universities have had their policies and procedures in relation to sexual violence assessed by the national regulator.

This is counter to TEQSA’s legislative objective “to protect students undertaking, or proposing to undertake, higher education in Australia by requiring the provision of quality higher education.”<sup>70</sup>

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<sup>70</sup> *TESQA Act*, s.3.



### ***TEQSA's episodic management of incidents suppresses systemic responses***

TEQSA's episodic approach to complaints/concerns is highly problematic. In focusing on individual incidents, TEQSA's approach replicates and reinforces university complaints processes which treat sexual violence as a one-off problem of an individual perpetrator, effectively denying more systemic patterns.

Furthermore, as TEQSA's former Chief Commissioner Professor Nick Saunders AO has acknowledged, TEQSA's episodic approach to incidents makes an effective public sanction against a university for their handling of sexual violence extremely difficult to attain: "... a single episode probably would not be enough to actually lead to the cancellation of a provider's registration."<sup>71</sup> Given this episodic approach, it is possible that every Australian university could be simultaneously subject to one or several complaints/concerns but TEQSA not feel compelled to address the systemic factors that perpetuate sexual violence across the sector.

### ***TEQSA is ill-equipped to lead regulatory efforts around sexual assault and sexual harassment in Australian universities***

Given university's reliance on TEQSA for their accreditation, and therefore ability to operate, the regulator's administration of the *Threshold Standards* framework held some potential to drive substantive reforms in relation to university's management and prevention of sexual violence. However, as this analysis has made clear, regulation without any effective enforcement is futile. Rather than support substantive reform TEQSA has simply created "shallow rituals of verification".<sup>72</sup>

The national higher education regulator has proven itself ill-equipped to lead regulatory efforts around sexual assault and sexual harassment in Australian universities; it is therefore time that alternative approaches should be pursued.

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<sup>71</sup> Professor Nick Saunders AO, Former Chief Commissioner of TEQSA: Senate Education and Employment Legislation Committee, Parliament of Australia, *Budget Estimates* (31 May 2018) Hansard, 169-170.

<sup>72</sup> Michael Power, *The Audit Society: Rituals of Verification* (Oxford University Press, 1997) 123.

**Q36 – WHAT REGULATORY AND GOVERNANCE REFORMS WOULD ENABLE THE HIGHER EDUCATION SECTOR TO BETTER MEET CONTEMPORARY DEMANDS?**

**Q39 – WHAT REFORMS ARE NEEDED TO ENSURE THAT ALL STUDENTS HAVE A QUALITY STUDENT EXPERIENCE?**

**Q40 – WHAT CHANGES ARE NEEDED TO ENSURE ALL STUDENTS ARE PHYSICALLY AND CULTURALLY SAFE WHILE STUDYING?**

The current structures of institutions, regulation and funding in higher education are failing students who are subjected to sexual violence in university settings.

Genuine systemic reform will require political leadership at all levels of government, more robust application of existing legislative and regulatory tools towards effective enforcement, and innovative exploration of other legal and regulatory approaches.

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

1. Acknowledge that addressing sexual violence in university settings is a key issue in ensuring that all students have a quality student experience and are safe while studying. The Accord Panel has a unique opportunity to signal expectations around the prioritisation of campus-based sexual assault and sexual harassment as a serious and pressing issue requiring concerted action and resources across the Australian university sector.
2. Determine that the current reliance on self-regulatory approaches to campus sexual violence – as led by universities, residential colleges and their peak bodies – is characterised by inadequate institutional accountability and transparency, has failed students and requires urgent attention.

3. Determine that TEQSA, while it may have appeared to be the most appropriate agency, has proven itself ill-equipped to lead oversight efforts in tackling campus-based sexual assault and sexual harassment in Australian university settings.
4. Endorse 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 by the Commonwealth Government of a national, independent and expert-led Taskforce (as detailed in Fair Agenda and EROC Australia's submission to the Accord Panel) that could encourage the adoption of good practice, improve consistency between universities and residential colleges, enhance institutional transparency and accountability, and provide student survivors with effective recourse when failed by their institution's handling of these matters. I recommend that the Accord Panel seriously consider endorsing the establishment of this Taskforce as an urgent, necessary and effective mechanism to drive systemic change in relation to sexual violence in Australian university settings.
5. Endorse the allocation of adequate resourcing to drive the necessary reforms, beginning with the substantive implementation and monitoring of the *Change the Course* recommendations and other good practice guidance in both universities and residential colleges.
6. Endorse the expectation that all relevant stakeholders elevate the student voice in designing solutions, for example by mandating student representative positions in internal working groups or on the proposed Taskforce.