

# Joint response to the Australian Universities Accord Interim Report

Fair Agenda  
End Rape on Campus Australia

(August 2023)

FAIR  

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AGENDA



## About Fair Agenda

Fair Agenda is an independent community organisation campaigning for a fair and gender equal future. Our 43,000 members campaign on a broad range of gender equity issues, including women's safety, economic security and agency. We are focused on addressing gender-based violence in all contexts, including educational settings.

## About End Rape on Campus Australia

End Rape on Campus Australia (EROC Australia) works to end sexual violence at universities and residential colleges through direct support for survivors and their communities; prevention through education; and policy reform at the campus, state, and federal levels.

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Together with the National Union of Students, and The Hunting Ground Australia Project, survivor advocates and students, Fair Agenda and EROC Australia have been at the foreground of efforts to address and prevent sexual assault and sexual harassment in Australian universities and residential colleges, and to improve institutional accountability.

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# Executive Summary

Fair Agenda and End Rape on Campus Australia welcome the inclusion of student safety as an immediate priority for reform in the Australian Universities Accord Interim Report, and the acknowledgement that university approaches to sexual assault and harassment prevention and response are affecting not only the wellbeing of students and staff, but also their ability to achieve educational outcomes, and their career aspirations.

We welcome the Universities Accord Expert Panel's statement that addressing student safety, and particularly sexual assault and sexual harassment, requires concerted action.

## **The core intervention criteria we believe are necessary to improve student safety and accountability are:**

- Transparency - around which institutions are providing appropriate and effective responses and prevention initiatives, the scale of the problem, and about reported incidents and outcomes of those reports.
- Oversight - that is independent of universities and residences and led by experts in sexual violence prevention and response,
- Effective complaints avenue - for concerns to be raised by students, survivors and other stakeholders; and
- Accountability - for institutions when appropriate standards aren't met.

We see these factors as each critical in their own right, but also inter-dependent. For example, we cannot hope to realise true transparency without oversight; and we cannot ensure accountability without an effective complaints avenue to identify concerns and failures in the system.

We believe some of the potential reforms proposed in the Interim Report offer an avenue to realise some of these interventions; if developed and delivered in particular ways. We do not see an avenue for any of the reforms proposed to deliver all of the functions effectively on its own - to successfully achieve a major improvement to student safety from sexual violence; and to improve wellbeing and academic outcomes for survivors, such reforms would need to be developed and delivered with the intention to work in partnership, and each involving experts in both sexual violence prevention and response.

We have structured our response to the Report with a focus on avenues to deliver each of these functions in detail.

In summary, with reference to the relevant reform proposals, we note:

- **Student Charter:** has the potential to assist with transparency around what students should be able to expect from their institutions. But it would need to be developed with experts and significant detail and specificity to be effective. It would also need to be

matched with independent oversight, complaints and enforcement to make a meaningful difference.

- **Tertiary Education Commission:** we see potential for this to deliver on some of the oversight functions needed to drive change in this area; if it is resourced to deliver the scale of work needed to conduct monitoring and evaluation. As always, expertise in both sexual violence prevention and response would need to be in-house for this to be effective at delivering this component.
- **Ombudsman:** we retain concerns about whether an Ombudsman function can deliver the improved and effective complaints system that students need to make complaints about the substantive decisions made by their university; and its capacity to deliver an appropriate trauma-informed response to student survivors.

Our key recommendation for the Expert Panel is the need to ensure reforms that will jointly deliver against the transparency, oversight, complaints and accountability functions.

We retain concern about how these reforms can deliver the substantive sanctions and accountability function.

To deliver on the four criteria we believe are critical to success, we believe the following functions must be delivered by any reform must include:

- An effective and expert-led system for reviewing student or staff complaints about a university or residences' handling of a report of sexual violence.
- Transparency around the measures universities and their associated entities (including residences and colleges) say they are taking to address and prevent sexual violence – including the policies and procedures in place.
- Independent and expert-led ongoing monitoring and evaluation of whether or not the policies and procedures universities and residences say they are delivering meet good practice in sexual violence prevention and response and are delivering outcomes for students.
- Public reporting of these evaluations - including making public any recommendations made to strengthen a university or residential college's policies and procedures.
- Expert-led oversight of whether the measures universities and residences report they are delivering in prevention and response are actually being implemented and are actually accessible to students.
- Accountability - through the provision of meaningful sanctions where appropriate standards are not met.
- Transparency from universities on incidents of sexual assault and sexual harassment reported to the institution, and the actions taken - including disciplinary measures taken against perpetrators, special consideration measures adopted.

- Ongoing expert-led advice to institutions and governments on the latest standards/best practice guidelines relating to reporting and disciplinary frameworks, support services and prevention strategies.

## Grounding: the key systemic problems with current university and residence approaches

In preparing this response to the Interim Report, and our criteria for successful intervention; Fair Agenda and EROC Australia are focused on solving the following systemic problems we see in the university and residence space:

- 1) Failure to screen staff hires and student leadership appointments for prior convictions of sexual assault; active or prior protection orders; and active complaints of sexual violence.
- 2) Failure to remove known perpetrators of violence on campus; or provide basic protections against them causing further harm.
- 3) Actively harmful and traumatising responses to student reports of sexual assault - including:
  - a) Interviews which involve investigation staff asking student survivors what they were wearing at the time of the assault and how much they had been drinking,
  - b) Failure to provide any clarity or updates on what is being done as a result of your complaint / report while the process is underway,
  - c) Not providing any interim safety measures while investigations are underway,
  - d) Threatening to sanction student survivors if they tell anyone other than a designated support person that they have made a complaint about sexual assault, and
  - e) Survivors being unable to find out what is being done as a result of their complaint.
- 4) Systemic barriers to student survivors accessing relevant academic accommodations - such as onerous processes that require new medical evidence of trauma impacts each semester, which force student survivors into a position where they face a potential fail mark (and associated HELP debt), if they don't withdraw.
- 5) Absence of a functional independent mechanism for students to make complaints about their university or residences' harmful actions in response to a report of sexual violence, which also prevents the easy identification and resolution of systemic issues.
- 6) Failure to utilise and listen to experts in sexual violence prevention and response, and to implement evidence-based or good practice policies.
- 7) The overwhelming burden on student survivors to identify and call out systemic harm - too often issues are often only identified when brave student survivors come forward.

- 8) Many institutions fail to provide adequate and evidence-based prevention initiatives. Prevention efforts have been uneven across the sector, with some universities providing detailed training to sections of their student bodies, while others fail to provide any formal prevention education programs to the majority of their students.
- 9) The absence of any robust assessment / evaluation of whether the university's declared prevention and response policies meet good practice; if they are actually being implemented; and whether they are achieving meaningful improvements to student safety and wellbeing.
- 10) Lack of transparency around how institutions (universities and residences) manage and prevent sexual violence (e.g., number of incidents reported, outcomes and disciplinary measures for perpetrators; as well as student complaints about unsatisfactory outcomes from initial reports); and oversight of whether they are doing what they claim to.
- 11) The absence of consequences when universities, residences or other institutions continue to put student safety and wellbeing at risk; and no systemic disincentive for them to continue doing so.
- 12) The tendency for some institutions to treat this as primarily a public relations and reputational issue, rather than seeking to solve the actual problems.

## Criteria for successful reform: transparency

Transparency is a necessary precondition for successful sexual assault and sexual harassment prevention and response strategies.

From a response perspective, being transparent about the scale and scope of the problems and the steps taken to address them sets clear expectations about the behaviour of community members, communicates the seriousness with which an institution takes sexual harm, and fosters an environment of trust where people feel safe to come forward if they experience unwanted behaviour.

Transparency around initiatives and policies is also critical to enable a feedback loop from potential students and alumni who may be accessing information about policies in this area, which may inform their decisions regarding enrolment or donations - thus playing a critical role in incentivising a race to the top; and allowing a positive feedback loop for accountability interventions as well.

Fair Agenda and End Rape on Campus believe that the proposed national Student Charter, and the proposed *Support for Students Policy*, could play a critical role in providing the necessary transparency around which institutions are providing appropriate and effective responses to reports and disclosures of sexual assault and sexual harassment, as well as which institutions are engaging in effective prevention initiatives.

## Concern: reliance on self-reporting

Several recent initiatives that have focused on increasing transparency through self-reporting have failed to achieve meaningful change. We believe that the success of any intervention that aims to deliver meaningful transparency also requires expert-led oversight that can check whether the actions being self-reported by institutions are occurring, and that they are effective in improving sexual violence prevention and/or response.

**Case study:** Following the release of the Australian Human Rights Commission's 2017 *Change the Course* report, then-Minister for Education, Simon Birmingham, directed universities to inform the regulator, TEQSA, of the actions they were taking to address the issues raised in the report. The result was TEQSA's *Report to the Minister for Education: Higher education sector response to the issue of sexual assault and sexual harassment*, which was released in January 2019.<sup>1</sup>

As noted in the Report methodology, TEQSA relied on self-reporting by the universities to provide its analysis of how institutions were responding to *Change the Course*. The Report does not state that attempts were made by TEQSA to confirm the validity or efficacy of the self-reported actions, nor does it indicate that TEQSA engaged with experts in sexual violence prevention or response when conducting its analysis.

In Senate Estimates in 2019, TEQSA was asked if it was aware that three publicly available reviews showed significant discrepancies between the actions universities had self-reported, and the findings of the independent experts who conducted the reviews. TEQSA's response was "TEQSA is aware that there are discrepancies between the self-reported actions and the findings of the independent experts."<sup>2</sup> TEQSA did not provide further information, or any explanation and did not appear to seek further information from the universities about the discrepancies.

## Concern: voluntary university transparency

It has been our experience that universities - and their peak body, Universities Australia - have been reluctant to reveal the true extent of sexual violence within their communities.

One of the recommendations agreed to by universities following the release of the Australian Human Rights Commission's 2017 *Change the Course* report was to report publicly about their

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<sup>1</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>, p.16

<sup>2</sup> Senate Standing Committees on Education and Employment, Parliament of Australia, *Additional Estimates 2018-19*, Question on Notice SQ19-000078.



progress to meeting the recommendations made in the report.<sup>3</sup> Just a handful of universities provide such annual reports.

**Case study:** In the 2017 *Change the Course* report, the Australian Human Rights Commission recommended that universities should an independent body to conduct the National university student survey of sexual assault and sexual harassment at three yearly intervals to track progress in reducing the prevalence of these incidents at a sector wide level.<sup>4</sup> This was agreed to by the sector, and a second national survey, the *National Student Safety Survey*, funded by Universities Australia, was conducted by the Social Research Centre in 2021.<sup>5</sup>

In line with the AHRC’s recommendation, a third survey would have been due in 2024, however Universities Australia would not commit to the survey until faced with significant media and political pressure.

In a public hearing of the Senate Legal and Constitutional Affairs References Committee’s Inquiry into current and proposed sexual consent laws in Australia on 27 July 2023, Universities Australia advised that they had not decided on whether to run a third survey, with UA Chief Executive Catriona Jackson stating “we may do another one; we haven’t made a final decision.”<sup>6</sup>

At the National Press Club on 8 August 2023, in response to questions by the media, Universities Australia chair Professor David Lloyd advised that a decision had not been made about conducting a third survey.<sup>7</sup> Later that day, in a media release, Universities Australia stated “We are committed to revisiting and advancing an appropriately redesigned survey, to be rolled out in 2024.”<sup>8</sup>

## Potential reform: national student charter

**Potential proposal:** *developing a national student charter, in collaboration with domestic and international students, ensuring a national commitment and consistent approach to the welfare, safety and wellbeing of all students.*

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<sup>3</sup> 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/sexdiscrimination/publications/change-course-national-report-sexual-assault-and-sexual>, p.10

<sup>4</sup> *Ibid.* p.15

<sup>5</sup> National Student Safety Survey (Web Page, 23 March 2022) <https://www.nsss.edu.au>

<sup>6</sup> Senate Legal and Constitutional Affairs References Committee, Parliament of Australia, *Current and proposed sexual consent laws in Australia* (27 July 2023) Hansard, p.34

<sup>7</sup> Universities Australia, *Q&A Address to the National Press Club of Australia*, (Web Page 10 August 2023) <https://www.universitiesaustralia.edu.au/media-item/qa-address-to-the-national-press-club-of-australia/>

<sup>8</sup> Universities Australia, *Universities Australia statement on sexual harm*, (Web Page, 9 August 2023) <https://www.universitiesaustralia.edu.au/media-item/universities-australia-statement-on-sexual-harm/>

In New Zealand, the *Education (Pastoral Care of Tertiary and International Learners) Code of Practice 2021* (the Code) requires providers to be transparent about the number of complaints received each year, the nature of those complaints, and their outcomes - both at an aggregate level and disaggregated by diverse student groups. This is required to be reported to the Code administrator, students and other stakeholders, and to be published on provider websites.<sup>9</sup>

We believe that a similar requirement in Australia should be introduced and would assist in delivering part of the transparency reforms needed.

At present, few universities or residences provide regularly updated information about:

- the number of reports and/or disclosures of sexual assault and/or harassment they receive,
- the action taken in response to those reports or disclosures, or
- whether they have been the subject of a complaint or investigation to an external body, such as an ombudsman or the higher education regulator for mishandling reports.

### **Potential reform: regular national surveys**

In addition to a requirement for universities and residences to regularly and publicly report on the number of reports and disclosures they receive, the nature of those reports and disclosures, and the action taken in response to them, it is critically important that national student safety surveys continue to be conducted at least every three years, as recommended in *Change the Course*.<sup>10</sup>

Conducting consistent surveys enables the tracking of progress in reducing the prevalence of sexual assault and harassment and the progress in ensuring the improvement of university responses to incidents. It will create visibility of the success or failure of interventions and reforms at both an institutional, and sector-wide level and is key to ensuring achievement of improved outcomes.

Critically, conducting regular national surveys and requiring universities and their residences to regularly publish information about the reports they receive, will enable both the institutions themselves and stakeholders, such as current and prospective students, to see the differences between two datasets - that is, what universities believe is happening on their campuses, and what's actually happening.

Universities and residences are sometimes of the belief that prevalence rates of sexual assault and/or sexual harassment in their communities are low, with some even claiming to have

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<sup>9</sup> Ministry of Education, *New Zealand Education (Pastoral Care of Tertiary and International Learners) Code of Practice 2021*, <https://www.enz.govt.nz/assets/Education-Pastoral-Care-of-Tertiary-and-International-Learners-Code-of-Practice-2021.pdf>

<sup>10</sup> Australian Human Rights Commission, *Change the Course*, p.15

received zero reports over a 12-month period. Results from the two national student surveys, *Change the Course* and the NSSS, demonstrate much higher prevalence rates than are reported to universities. This suggests that students either don't know how to file a report to their institution, or that they don't trust the university's processes - and thus makes clear the need for further reform.

**Case study:** In August 2023, the ABC requested data on sexual assault and harassment from 39 of Australia's 43 universities.<sup>11</sup>

Griffith University informed the ABC that it had received a total of 6 reports in 2021. Results from the NSSS show that 2.1% of Griffith University students experienced sexual assault in a university context in the previous 12 months<sup>12</sup> and enrolment data provided by Griffith to the government shows that there were 49,220 students at Griffith in that period.<sup>13</sup> This equates to 1033 incidents of sexual violence, but Griffith received just 6 reports.

Deakin University reported to the ABC that it had received 8 reports of sexual assault in 2022 and just 2 in 2021.<sup>14</sup> The responses received by Deakin University to the NSSS were not statistically significant, and therefore no information about the percentage of students who had experienced sexual violence in a university context in 2021 are not available<sup>15</sup>. Results from the 2017 *Change the Course* report, however, demonstrated that 2.3% of the 52,926 students enrolled at Deakin during the survey period reported experiencing sexual violence in a university setting in 2015/26<sup>16</sup>. This equates to 1217 sexual assaults.

**A full table of comparative data from the *Change the Course* and NSSS reports, and the number of reports universities informed the ABC they had received is provided at Appendix A.**

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<sup>11</sup> Claudia Long, 'Calls to update university student safety survey after fears true extent of assaults on campus remains unknown', *ABC News* (online, 9 August 2023), <https://www.abc.net.au/news/2023-08-09/university-assaults-on-campus-extent-unknown/102704066>

<sup>12</sup> Griffith University, 2021 National Student Safety Survey (Web Page, 2022) <https://www.griffith.edu.au/safe-campuses/national-student-safety-survey>

<sup>13</sup> Commonwealth Department of Education, *2021 Section 2 All Students*, (9 February 2023), <https://www.education.gov.au/higher-education-statistics/resources/2021-section-2-all-students>

<sup>14</sup> Claudia Long, *op cit*.

<sup>15</sup> Deakin University, National Student Safety Survey (Web Page, 2022), <https://www.deakin.edu.au/about-deakin/vision-and-values/diversity-equity-and-inclusion/respectful-and-inclusive-communities/national-student-safety-survey>

<sup>16</sup> *Ibid*.

## Criteria for successful reform: oversight

Fair Agenda and EROC Australia believe that independent and expert-led oversight will be critical to driving improvements to student safety across university communities.

Without incorporating ongoing oversight into any reform, we believe any associated transparency, complaints and accountability measures would not deliver the change required.

We believe effective oversight on this issue would include:

- Reviewing whether the measures universities and residences report they are delivering in prevention and response are actually being implemented and are actually accessible to students.
- Monitoring and evaluating of whether or not the policies and procedures universities and residences say they are delivering meet good practice in sexual violence prevention and response and are delivering outcomes for students.
- Confirming the number of incidents of sexual assault and sexual harassment reported to the institution, and confirming what, if any, actions were taken in response to those reports - including things like: disciplinary measures taken against perpetrators, special consideration and safety measures adopted for survivors, and the failure rates for students who report experiencing sexual assault and/or sexual harassment.

Critically, any oversight in this area must be drawn from independent experts with specialised knowledge in the relevant area (noting the separate expertise of sexual violence prevention and response), so that they can assess whether the substantive practices of universities are in line with good practice.

We envisage that those providing this oversight function may also be able to provide advice to government and institutions on matters relating to good practice and minimum standards.

This is an area where existing initiatives have consistently failed. We note that there has been no systematic monitoring of university responses to the findings of *Change the Course* or the National Student Safety Survey, nor has there been any rigorous evaluation of policies, practices, or prevention efforts to date.

EROC Australia and Fair Agenda believe that the proposed Tertiary Education Commission and Student Charter, could be designed in a way that provides an avenue to deliver oversight of the sector in relation to good practice in both prevention of, and response to, sexual assault and sexual harassment.

## **Potential reform/avenue: Tertiary Education Commission**

**Potential proposal:** *establishing a new national body, a Tertiary Education Commission, working with the Minister and Department, which could:*

*i. be based on the principles of independence and expert decision-making to provide oversight, coordination and expert advice to the higher education sector.*

A Commission that is independent and enables experts with deep experience in sexual violence response and prevention in university settings to provide advice on good practice, and rigorously monitor and evaluate university and residence actions could provide oversight at a national level. To achieve this, it would be critical to ensure this is adequately resourced as an internal function; and that all people responsible for this work have relevant expertise.

For the Commission to provide effective oversight in relation to sexual violence, it would require:

- Embedded expertise in both sexual violence response and prevention,
- A mandate that encompasses both universities and their associated residences,
- Resourcing to conduct ongoing monitoring of university policies and practices,
- Resourcing to conduct regular, robust evaluations of the effectiveness of university policies and practices, including in providing appropriate support to student survivors and the efficacy of prevention programs in reducing the prevalence of violence in their communities, and
- The ability to refer universities and residences who are not meeting good practice standards to an accountability mechanism.

Currently, there is an over-reliance on universities self-reporting the measures in place to prevent and respond to sexual assault and harassment, and an absence of independent, expert-led oversight to ensure that responses are meeting good practice standards or that prevention efforts are genuinely effective.

## **Potential reform: a national student charter**

**Potential proposal:** *developing a national student charter, in collaboration with domestic and international students, ensuring a national commitment and consistent approach to the welfare, safety and wellbeing of all students.*

Fair Agenda and EROC Australia are supportive of the proposal to develop a national student charter to ensure a national commitment and consistent approach to the welfare, safety and wellbeing of students. We believe that a charter, if it is developed in collaboration with students and experts in critical fields such as mental health and sexual violence prevention and response, could provide a relevant and detailed set of minimum standards to be met by each institution, and provide a framework by which universities would be held accountable.

We would be particularly concerned that a charter sets clear standards in relation to sexual violence prevention and response, including provisions related to:

- Student survivor rights in relation to reporting (trauma-informed response),
- Rights to transparency around university processes and outcomes (including clear timelines),
- Rights to academic accommodations and support,
- Rights to safety measures to be implemented on campus and, where applicable, in residences, and
- Prevention initiatives and training for university staff and student leaders that is expert designed and led and has been thoroughly evaluated to ensure effectiveness.

We note the suggestion that New Zealand's *Education (Pastoral Care of Tertiary and International Learners) Code of Practice 2021* (the Code) has been identified as a potential model that Australia could look to in the development of a charter.

As noted above, we believe that to address sexual violence in university contexts any interventions need to be independent of universities; expert-led and promote transparency and accountability through meaningful sanctions. Therefore, we would be most concerned with ensuring input by experts into the development of a charter, as well as specificity and enforcement of the charter.

It is important that any new interventions do not replicate existing processes. We note the failure of the current *Higher Education Standards (Threshold Standards)* and the enforcement (or lack thereof) of these *Standards* in delivering improvements in this area. We believe any charter would need to be much more specific in the standards and expectations set; and that it would need to be meaningfully enforced, with sanctions for non-compliance, and public reporting of non-compliance.

To be effective in improving oversight of student safety and institutional accountability, a Student Charter must:

- Be developed by experts, including experts in sexual violence prevention and response, as well as mental health experts, students (including students with lived experience of sexual violence, LGBTQI+ students, students with disabilities, First Nations students and international students), and student support experts,
- Encompass both universities and their associated residences,
- Be enforceable and provide accountability for institutions who do not comply with the requirements of the Charter, and
- Be subject to rigorous monitoring and evaluation to ensure effectiveness.

## Criteria for successful reform: effective complaints avenues

It's crucial that students have functional and accessible avenues for raising complaints about their experiences at their university - both internally and externally.

Even with effective minimum standards, transparency and oversight, we cannot expect to improve student outcomes without a complaints mechanism to alert the oversight body when systems are not working as intended or are not being delivered as expected.

When a student has been subjected to sexual violence in their university community, we believe they must be able to access a complaints process at their university that meets basic standards, including:

- Being accessible to all students,
- Being trauma-informed,
- Adhering to clearly defined and communicated timeframes for each step of the process,
- Enabling for the implementation of interim safety measures while a complaint is being processed, and
- Requires the provision of information, in writing, about the outcome of a complaint, the reasons for that outcome, and of any avenues for appeal, external review or escalation.

When their university has responded harmfully, we believe student survivors and their advocates must have external avenues to escalate their complaints, that:

- Are freely available and accessible for all students,
- Are designed in consultation with experts in sexual violence response,
- Are trauma-informed,
- Provide timely responses and outcomes, and
- Provide accountability through the application of sanctions for universities and residences who are found to have mishandled reports.

While the *Threshold Standards* requires universities to have mechanisms in place to address complaints<sup>17</sup> these are often difficult for students to navigate. Additionally, existing processes for students to raise complaints about their university via external processes are thoroughly inadequate.

### Potential reform: national student charter

A national Student Charter could provide an avenue to establish a nationally consistent set of minimum standards that universities' internal complaints processes must meet.

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<sup>17</sup> *Higher Education Standards Framework (Threshold Standards) 2021* (Cth), [https://www.legislation.gov.au/Details/F2022C00105/Html/Text#\\_Toc67664708](https://www.legislation.gov.au/Details/F2022C00105/Html/Text#_Toc67664708)

We note that the New Zealand *Education (Pastoral Care of Tertiary and International Learners) Code of Practice 2021* provides clear guidelines for institutions in relation to student complaints<sup>18</sup>, and that similar guidelines could be effective within an Australian context.

New guidelines must not replicate the *Threshold Standards* but should be developed in consultation with local experts and students; and at a level of specificity that provides transparency around what students can and should expect from their institution.

### **Concern: any reliance on police processes for university action**

Critical to any effective complaints process in a university context will be the separation of university processes and police and criminal justice processes.

Sexual harm can be at once both a criminal and a university misconduct matter. Some students may choose to engage in a criminal justice process, while others may choose not to. It is critical to note that many students who have been impacted by sexual violence do not feel comfortable pursuing complaints with police, or going through the traumatising criminal justice process - but may have safety and wellbeing needs from their university (for example, around ensuring that they are not required to sit in the same tutorial or lecture as the person who harmed them, or the provision of academic support, such as assignment due date extensions as they manage their trauma). A student's ability to access safety and accountability should not require them to pursue criminal or police intervention, which may increase their exposure to trauma and harm.

It is key to note that a survivor who decides to go through the process of reporting sexual assault to the police can typically expect to wait for years for any kind of court hearing or finding. Students should not have to wait for a criminal finding in order to have their safety and wellbeing needs met by their university.

Further, it's important to note that university disciplinary processes are internal processes that are distinct from the criminal justice system. University processes are administrative matters that involve breaches of university policies, such as codes of conduct, which can lead to sanctions, including suspension or expulsion<sup>19</sup>. It is therefore necessary that internal university complaints and misconduct policies are fit for purpose.

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<sup>18</sup> Ministry of Education, *New Zealand Education (Pastoral Care of Tertiary and International Learners) Code of Practice 2021*, <https://www.enz.govt.nz/assets/Education-Pastoral-Care-of-Tertiary-and-International-Learners-Code-of-Practice-2021.pdf>

<sup>19</sup> Andrea Durbach and Kirsten Keith, *On Safe Ground: A Good Practice Guide for Australian Universities* (Australian Human Rights Centre, UNSW, August 2017), [https://www.humanrights.unsw.edu.au/sites/default/files/documents/AHR0002\\_On\\_Safe\\_Ground\\_Good\\_Practice\\_Guide\\_online.pdf](https://www.humanrights.unsw.edu.au/sites/default/files/documents/AHR0002_On_Safe_Ground_Good_Practice_Guide_online.pdf), p.89



## Potential reform: Ombudsman

We note that the Interim Report raised the possibility of strengthening the role of the Commonwealth Ombudsman and enabling them to respond to both international and domestic student complaints.

EROC Australia and Fair Agenda hold concerns that without major changes to its mandate, scope and function, the Commonwealth Ombudsman would not deliver a suitable mechanism for receiving and responding to student complaints.

We believe that a new external complaints mechanism is required to address university. This complaints mechanism should:

- Be independent of universities and residences,
- Be able to receive complaints from both domestic and international students, and students enrolled at both public and private universities, as well as from other stakeholders, such as advocates acting on behalf of students,
- Account for the specific needs of specific cohorts of students, including students with disabilities, LGBTQI+ students, First Nations students and international students, and
- Provide a genuine investigation process that [can ascertain relevant information from institutions; make findings; and either implement or recommend meaningful sanctions to deliver accountability for universities and residences who fail to meet good practice and/or standards.

It is critical that any mechanism is informed by experts in sexual assault response, to ensure that complaints processes - and their outcomes - are trauma-informed.

In its current form, our concerns about the Commonwealth Ombudsman relate to:

- The threshold for accessing its complaint mechanism:
  - The Ombudsman requires complainants to have exhausted internal complaints processes at their university before engaging its office.<sup>20</sup> It's often the case that student survivors have experienced lengthy reporting processes at a university level, sometimes taking more than 12 months, and that internal university complaints processes can take significant additional amounts of time. This requirement causes unnecessary delays for students who are seeking safe learning environments.
- Its inability to investigate complaints about some institutions:
  - Presently, the Ombudsman cannot accept complaints made by students who attend private institutions, such as Bond University, Torrens University, or Notre Dame University.
- Its lack of sufficient accountability mechanisms

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<sup>20</sup> Commonwealth Ombudsman, *Before you complain* (Web Page, 2023), <https://www.ombudsman.gov.au/complaints/how-to-make-a-complaint/before-you-complain>

- The Commonwealth Ombudsman processes and outcomes lack the accountability mechanisms that we view as necessary to ensure that universities are taking all steps possible to prevent and respond appropriately to sexual violence. It cannot make a new decision, or enforce changes, but can only make recommendations on how improvements can be made by the institution.

Current processes by which students can file complaints about any aspect of their university experience are wholly inadequate, with processes being confusing and fractured across multiple agencies, including state and territory ombudsman offices, the Commonwealth Ombudsman, and the higher education regulator, TEQSA. Different student cohorts - international students, domestic students, students attending public universities, and students attending private universities - must navigate a patchwork of agencies to establish which can accept and investigate their complaints.

Concerningly, despite having accepted and investigated multiple complaints about issues of non-compliance with the *Threshold Standards* that filed by EROC Australia on behalf of students between 2017 and 2020, EROC received information from TEQSA on several occasions in 2021 advising us that TEQSA did not accept complaints from students. Further, TEQSA itself updated its own materials, including its policies and website, in 2021, removing references to the acceptance of complaints. We remain unclear as to whether TEQSA will or will not receive complaints from students about a university's non-compliance with the *Threshold Standards*.

## Criteria for successful reform: accountability

EROC Australia and Fair Agenda believe that ensuring accountability is critical for securing meaningful improvements in sexual assault and harassment response and prevention efforts from universities and residences.

The accountability interventions need to be both internal, within university and residence governance structures, and also external, via an independent mechanism that can apply sanctions to universities and residences who fail to meet good practice and/standards. We see external accountability - through meaningful sanctions - as critical in its own right.

We also see external accountability as critical to increasing internal accountability within universities and residence structures – by ensuring that university governance bodies, such as Senates and Councils, must consider and value the importance of student wellbeing and welfare as it relates to the organisation's compliance, financial, reputation, and competitive advantage. Ideally, we would want student safety to be a key performance indicator for Vice Chancellors; regularly reviewed at Board meetings.

To be effective, any accountability mechanism or intervention must apply to residences and colleges - regardless of their structure or ownership.

We believe the sanctions applied by any accountability mechanism should be broad, and commensurate with the severity of the failure.

We would want an accountability body to have the power to implement meaningful sanctions; and also, to have a structure, expertise and mandate that allowed it to recommend and implement any appropriate sanctions in a timely manner.

### **Concern: transparency without additional meaningful sanctions**

We believe that transparency is a key component of accountability, but that it must be complemented by other sanctions sufficient to incentivise swift and meaningful action by university leaders. Specifically, we believe that adverse findings made about universities made after oversight or as the result of an external complaints mechanism should be made publicly available to ensure full transparency for all stakeholders, including current and future students.

We note based on previous experience that the potential benefit of transparency in findings about responses being inadequate can be undermined by the absence of complementary meaningful sanctions.

### **Concern: Conflict of interest in accountability**

Critical to the success of effective oversight and accountability on this issue is independence from stakeholders in university and residences, who have at least a perceived conflict of interest in fully exposing and sanctioning systemic issues happening across institutions, as well as within them.

An effective accountability mechanism would be run by experts who are independent of current university and residence administration, to preclude any perceived or real conflict of interest.

We note that for this reason, we would be concerned about replicating the *New Zealand Education (Pastoral Care of Tertiary and International Learners) Code of Practice 2021* as the current administrators of the Code, the New Zealand Qualifications Agency, states on its website “NZQA expects to delegate some of its monitoring responsibilities to the New Zealand Vice Chancellors Committee (NZVCC), which is currently trading as Universities New Zealand (UNZ).”<sup>21</sup>

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<sup>21</sup> New Zealand Qualifications Agency, *NZQA as Code Administrator*, (Web Page, 29 June 2023), [https://www2.nzqa.govt.nz/tertiary/the-code/nzqa-as-code-administrator/#:~:text=NZQA%20is%20the%20Code%20Administrator,Practice%202021%20\(the%20Code\)](https://www2.nzqa.govt.nz/tertiary/the-code/nzqa-as-code-administrator/#:~:text=NZQA%20is%20the%20Code%20Administrator,Practice%202021%20(the%20Code))

It is not clear that any of the reforms proposed for consideration in the Interim Report would provide the accountability mechanism that is needed to drive meaningful change in university and residence efforts to prevent and better respond to sexual assault and sexual harassment.

We note that an Ombudsman-like reform would need drastically improved scope, powers and sanctions to be beneficial in this space. The current Commonwealth Ombudsman powers are not sufficient to enable what's needed. By way of example:

- Both domestic and international students would need to be able to utilise the accountability function,
- students and advocates would need to be able to raise concerns about the substance and nature of decisions,
- The body would need to be able to secure relevant information from institutions, and
- It would also have to have the power to implement meaningful sanctions commensurate with the severity of the institutional failure.

ERO Australia and Fair Agenda believe that a functional accountability mechanism, with powers to administer appropriate sanctions, is needed to drive meaningful changes to ensure student safety.

## Appendix A: Comparative data from the *Change the Course* and NSSS reports, and the data provided by universities to ABC News

University	Sexual assaults in a university setting in 2015/16	Sexual assaults in a university context in the 12 months prior to the 2021 NSSS	Number of sexual assault reports the university informed the ABC it received in 2021	Number of sexual assault reports the university informed the ABC it received in 2022
Australian Catholic University	362	164	9	18
Australian National University	825	1110	31	20
Bond University	164	42	Data unavailable	6
Central Queensland University	108	158	Declined request	Declined request
Charles Darwin University	154	N/A	Data not available	Data not available
Charles Sturt University	1416	767	Declined request	Declined request
Curtin University	151	558	1	4
Deakin University	1217	N/A	2	8
Edith Cowan University	168	210	Declined request	Declined request
Federation University	84	55	Did not respond	Did not respond
Flinders University	50	255	Declined request	Declined request
Griffith University	837	1033	6	4
James Cook University	384	650	35	22
La Trobe University	630	353	Declined request	Declined request
Macquarie University	769	494	Did not provide	Did not provide
Monash University	1107	609	19	20
Murdoch University	N/A	262	18	24
QUT	976	479	41	34
RMIT	1299	N/A	4	2
Southern Cross University	408	112	1	8
Swinburne University	78	N/A	23	26
University of Adelaide	217	430	22	14
University of Canberra	187	277	3	16
University of Melbourne	929	924	13	31
University of New England	871	260	8	Data not available
University of New South Wales	729	394	119	175
University of Newcastle	484	1031	29	47
University of Notre Dame	132	196	Did not respond	Did not respond
University of Queensland	562	899	11	19
University of South Australia	942	189	Declined request	Declined request
University of Southern Queensland	216	N/A	Declined request	Declined request
University of Sydney	1530	1161	15	20
University of Tasmania	622	400	Did not respond	Did not respond
University of the Sunshine Coast	N/A	219	39	34
University of Western Australia	554	853	7	7
University of Technology, Sydney	949	692	66	71
Victoria University	189	N/A	No reports in system	No reports in system
Western Sydney University	266	N/A	17	36 (21 related to a single incident)

## Appendix B: Student support needs and experiences

Since forming in 2015, EROC Australia has provided support to hundreds of students who have experienced sexual assault and/or sexual harassment within a university context. EROC Australia acts as support for student survivors, sometimes acting on their behalf in complaints processes, as well as connecting them with external support services such as counselling and legal services.

The student survivors EROC supports most often state that the practical measures they are seeking from their university in order to be able to continue their studies following a sexual assault include:

- **Academic accommodations** such as extensions on assignment due dates. This may be needed because they find that the effects of trauma impact their ability to concentrate, and/or because they're attempting to navigate internal university complaints processes or external processes such as the criminal justice system.
- **Alternative exam arrangements.** This may be because the effects of trauma impact their ability to concentrate, and/or because the person who has harmed them will be in the same exam location.
- **Timetable changes**, such as switching tutorial sessions. This is to avoid encountering the person who harmed them, or to enable them to attend counselling or other appointments.
- **Alterations to their enrolment**, such as changing to part-time studies or deferring to a future semester if they find that effects of trauma are impacting their ability to succeed academically.
- **Special considerations that will allow them to feel safe** while continuing or completing their studies, such as allowing international students to return to their home country and complete their studies remotely.
- **The removal of the person who assaulted them from the university**, so that they can feel safe in the campus community again - including being able to utilise library services and academic support service spaces. This is often also so that the risk of future harm to other students is minimised.

Amongst the commonly cited reasons for student survivors seeking EROC's assistance are:

- **Reports that have gone unresolved for months** - students often file formal sexual assault and/or harassment reports using their university's reporting processes only to find that the process can take up to three months or more to be investigated and finalised.

- **Inadequate interim safety measures** - universities typically do not implement adequate safety measures while they investigate a complaint, leaving student survivors afraid of physically encountering the perpetrator on campus, and being subject to intimidation.
- **Insufficient academic support** - students have experienced significant barriers and difficulties in seeking to access academic accommodations or special consideration while dealing with the impacts of their assault.
- **A lack of information or updates** being provided following a report of sexual assault - most students do not receive updates from their university after making a report. Students have to proactively seek further information about the status of their complaint, including when they can expect a resolution, and/or what, if any, sanctions the offending student will face.
- **A lack of transparency** - students are regularly told that they cannot find out the outcome to their report due to “privacy reasons.” This not only leaves them in the dark about their ongoing safety on university grounds but makes them feel as though the reporting process has been a waste of their time.

The student survivors EROC supports note that their university could address the barriers to their access and enjoyment of their education, by:

- **Providing access to regular, ongoing trauma-informed counselling.**
- **Providing on-campus safety measures**, such as no-contact orders or security escorts.
- **Assisting with locating alternative housing** if the assault occurred in university housing or a residential college.
- **Addressing the financial implications of sexual violence**, through the waiving of HECS or FEE-HELP liabilities for units that they were unable to successfully complete as the result of being assaulted.
- **Assisting them financially** through the provision of emergency loans to cover unexpected expenses that can arise following an assault, particularly if the assault results in them needing to move to a different residence.

A Commission that is independent and enables experts in both sexual violence prevention and response to provide oversight and advice to both governments and the university sector, including university residences, would provide oversight at a national level. This would ensure consistency and help to address the uneven approaches to both prevention and response across the sector.