



Senator the Hon James McGrath
Chair
Senate Education and Employment Legislation Committee
eec.sen@aph.gov.au

Dear Senator,

Subject: Discussion at Senate Estimates (24 October 2019) on TEQSA's response to the issue of sexual assault and sexual harassment in the higher education sector

I am writing to clarify parts of the discussion on sexual assault and sexual harassment in the higher education sector that occurred at the recent meeting of the Senate Education and Employment Legislation Committee.

During her questioning, Senator Amanda Stoker was highly critical of a TEQSA report (and the TEQSA Commissioners) because it did not make any mention of the important issue of the rights of a person accused of sexual assault or harassment in the context of a higher education provider's internal disciplinary procedures. The Hansard transcript shows that I responded that I would need to familiarise myself with the contents of the report before responding further. I have now had the opportunity to do this.

I have identified the document to which Senator Stoker referred as TEQSA's report published in January 2019 titled *Report to the Minister for Education: Higher education sector response to the issue of sexual assault and sexual harassment*.

The purpose of that report was to provide the Minister for Education with a factual account of how the higher education sector had responded to issues identified and recommendations made by the Australian Human Rights Commission (AHRC) in its report *Change the Course: National Report on Sexual Assault and Sexual Harassment at Australian Universities (2017)*. The then Minister for Education and Training, Senator the Hon Simon Birmingham, had written to the universities to seek their responses to the AHRC report and had sought a factual summary account of those responses at the sector level from TEQSA.

The TEQSA report was organised around the recommendations in the AHRC report to which providers had been asked by the Minister to respond. As there were no recommendations by the AHRC relating to a provider's investigative and disciplinary procedures, providers did not give this information to TEQSA nor did TEQSA include such information in its report to the Minister.

It is important to note that the TEQSA report was not intended as a guide to policy and procedure in the area of student or staff discipline, nor indeed, any other area. The report was never intended as a guidance note or a good practice guide on the issue of sexual assault and sexual harassment.

To clarify the position, the purpose of the report was to provide an overview of how the sector had responded to the issues identified in the AHRC's report in response to a direct request from the then Minister.

TEQSA has, however, addressed the conduct of internal disciplinary procedures in its published guidance notes on wellbeing and safety, and grievance and complaint handling. Both guides make explicit reference to the importance of referring serious matters, including assaults, to the police.

Further, as we mentioned to the Committee, in consultation with leading experts in the field, TEQSA is currently finalising a good practice note for the higher education sector which will include advice on this matter and other important aspects of an overall approach of providers to managing and preventing sexual assault and sexual harassment.

TEQSA is also reviewing its *Guidance Note: Grievance and Complaint Handling*. This builds on Standard 2.4.3 in the *Higher Education Standards Framework (Threshold Standards) 2015*, which requires institutions to include, 'provision for confidentiality, independent professional advice, advocacy and other support for the complainant or appellant, and provision for review by an appropriate independent third party if internal processes fail to resolve a grievance'. Our review will include careful consideration of the rights of a person accused of serious misconduct, such as sexual assault and sexual harassment i.e. those elements that Senator Stoker suggested were ignored in the regulatory framework and in the example of a university's disciplinary procedures to which she referred.

I trust that this clarification will be helpful to the Senate Committee. Mr McClaran and I would be very happy to provide a fuller briefing on TEQSA's work in this important area if the Committee would find that helpful.

Yours sincerely,

Professor Nick Saunders AO
Chief Commissioner, TEQSA
15 November 2019

cc: Hon Dan Tehan MP, Minister for Education

Dr Michele Bruniges AM, Secretary, Department of Education