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24 August 2023

LEGAL AND CONSTITUTIONAL AFFAIRS REFERENCES COMMITTEE - Current and proposed sexual consent laws in Australia

Thursday, 27 July 2023 - Sydney

End Rape on Campus Australia provides the below responses to evidence given by the Tertiary Education Quality and Standards Agency (TEQSA) at the Legal and Constitutional Affairs References Committee hearing on current and proposed sexual consent laws in Australia on Thursday, 27 July 2023 in Sydney.

Assertion by TEQSA: *I would say that we consider this [current rates of sexual violence] a high risk for the sector. We have it as a high risk on our risk register. When we are working with our various providers, we would be interested to know if they see it as a risk on their risk register, in terms of the likelihood and the impact, and therefore their actions.*

Response from EROC Australia: It is End Rape on Campus Australia's experience that TEQSA's regulatory responses do not align with the responses expected in relation to an issue considered "high risk", despite them identifying it as such in their evidence to the Committee.

In a submission to the Universities Accord Expert Panel in April 2023, Dr Allison Henry noted that between September 2017 and 30 November 2022, TEQSA had undertaken more than 60 individual assessments of universities' sexual violence policies and procedures. Dr Henry states:

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 where universities themselves had 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 sexual universities.¹

EROC Australia submits that if TEQSA viewed sexual assault and sexual harassment to constitute a "high risk" for the sector, its regulatory responses would be significantly more robust than simply "monitoring".

We are concerned that TEQSA's evidence suggests that it relies on the self-reporting of providers about whether they view the issues of sexual assault and harassment to be risks.

¹ Henry, A. 2023. Submission to Universities Accord, Review of Australia's Higher Education System: Discussion Paper consultation. Available at: <https://www.education.gov.au/australian-universities-accord/consultations/consultation-discussion-paper>. Accessed 10 August 2023.



We are concerned that TEQSA's evidence suggests that if providers do consider sexual assault and sexual harassment to be risks, they rely on those providers self-reporting the actions they are taking to mitigate such risk.

EROC Australia submits that if TEQSA viewed these issues to be "high risk", they would not rely on self-reporting from providers, and instead, would conduct robust monitoring of the risks, and thorough evaluations of the mitigation actions taken by providers, taking appropriate regulatory action as needed.

Assertion by TEQSA: *We will do our environmental scans, as well as relying on complaints, to make assessments of what's going on in the sector.*

Response from EROC Australia: EROC Australia is confused by TEQSA's assertion that it relies, at least in part, on complaints to make assessments of what's going on in the sector.

Despite having accepted and investigated multiple complaints filed on behalf of students between 2017 and 2020, we 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.

On 18 June 2021, EROC Australia received an email from [REDACTED], Compliance and Investigations at TEQSA, in response to an inquiry we had made in relation to the status of a complaint that we had filed on behalf of a student in 2019 that had not yet been resolved. [REDACTED] advised that TEQSA had closed the complaint – without notifying us or the student concerned that it had been closed – and stated that "our role is not to resolve individual complaints".

Further, EROC Australia notes that in October 2021, we filed a complaint against TEQSA with the Commonwealth Ombudsman, as we believed that TEQSA had mishandled a complaint we filed against a university on behalf of a student. In their response to us on 12 October 2021, the Ombudsman stated:

TEQSA also noted that its function under s 134 of the Tertiary Education Quality and Standards Agency Act 2011 does not include responsibilities associated with the handling of complaints about higher education providers. In particular the handling of disciplinary proceedings against an individual student.

EROC Australia notes that significant changes were made to TEQSA's *Complaints about Providers Policy* sometime between July of 2019 and September of 2021.

The version of the Policy from July of 2019, which has been provided as Appendix A stated that:

TEQSA welcomes complaints relevant to its responsibilities and uses such complaints to help perform its regulatory functions. TEQSA accepts complaints from anyone, including domestic and international students, other higher education providers and employees of higher education providers.



In September of 2021, an updated version of the policy, renamed the *Concerns and complaints about providers policy*, was released. This version, which has been provided as Appendix B, stated:

TEQSA is not a complaints resolution body and typically does not have a role in addressing individual complainants' grievances. We prioritise broader, systemic issues and are unlikely to pursue matters that:

- a. are one-off, isolated events, unless the conduct involves wider implications for students, staff, or the quality, integrity or reputation of the higher education sector*
- b. have not been considered through the provider's complaints handling processes*
- c. are solely for the purpose of obtaining redress for students or staff, unless there is clear evidence of deficiencies in the provider's complaint handling processes.*

Given the above, we remain unsure about whether TEQSA does accept and/or investigate complaints about higher education providers, despite the evidence provided to the Committee by TEQSA on 27 July 2023 asserting that it relies, in part, on complaints to make assessments.

Assertion by TEQSA: *We attempt to involve students in all of our consultations. We put out guidance notes. We interact with the various student peak bodies. We have at times made requests to a range of student bodies, including End Rape on Campus, to provide advice to us on our good practice note. We meet with Student Voice Australasia, the National Aboriginal and Torres Strait Islander Postgraduate Association, the Council of Australian Postgraduate Associations and so forth. So, yes, we make every effort to ensure that students are part of our consultation processes when it comes to the guidance we put out to the sector about their responses and their obligations under the standards in this matter.*

Response from EROC Australia: EROC Australia cannot comment as to the veracity of claims made by TEQSA that it attempts to involve students in all of its consultations; however, we confirm EROC Australia made submissions to TEQSA's requests for feedback on its Guidance Notes in relation to student wellbeing and complaints and grievances in 2018. These submissions were made via TEQSA's standard public feedback process.

Additionally, we confirm that we had provided feedback on a draft version of TEQSA's *Good Practice Note: Preventing and responding to sexual assault and sexual harassment in the Australian higher education sector* in October 2019. We were not, as was asserted in the document, an author. This was confirmed via email in July 2020, when TEQSA thanked EROC Australia for its feedback on the draft version of the Note, and stated "since you have seen the draft, it has undergone a multitude of edits by a large number of people internal and external to TEQSA".

On 13 June 2023, we received an email from TEQSA offering us the opportunity to meet with TEQSA staff to provide our thoughts on their consultation paper about their good practice note on preventing and responding to sexual harm. TEQSA provided a series of dates between 19 June 2023 and 6 July 2023 and advised that the meeting would be scheduled to take 30 minutes. A copy of the consultation paper was provided, which noted that TEQSA was seeking public submissions on the consultation paper. Sharna Bremner attended the meeting with TEQSA on behalf of EROC Australia on 26 June 2023.



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EROC Australia provided a written submission in response to TEQSA's consultation paper. A copy of that submission can be found at Appendix C.



Complaints about providers policy

Purpose

The purpose of this policy is to establish a set of principles informing TEQSA's handling of complaints about registered higher education providers.

Scope

This policy relates to complaints about registered higher education providers and prospective higher education providers.

This policy does not extend to complaints about TEQSA's processes, staff or resources, or about TEQSA's regulatory decisions.

For information about how to make a complaint about TEQSA, or about how to request a review of a regulatory decision made by TEQSA, view Complaints about TEQSA <<https://www.teqsa.gov.au/complaints-about-teqsa>>

Principles

These principles are intended to ensure consistent and efficient handling of complaints, maximising intelligence about the Australian higher education sector to inform our regulatory operations while maintaining complainants' right to privacy.

1. TEQSA welcomes complaints relevant to its responsibilities and uses such complaints to help perform its regulatory functions.
2. TEQSA accepts complaints from anyone, including domestic and international students, other higher education providers and employees of higher education providers.
3. Complaints are handled in a way that is prompt, respectful, responsive, fair and consistent.
4. If a complainant provides contact information, TEQSA will confirm receipt of a complaint.
5. Anonymous complaints are also accepted and TEQSA will investigate the case where there is sufficient information provided. Where insufficient information is provided, TEQSA may decide to take no further action but will record the information in case the matter becomes clearer and action is warranted at a later date.
6. TEQSA considers complaints about higher education providers in relation to the requirements of the [Tertiary Education Quality and Standards Act 2011](#) (the TEQSA Act), the [Education Services for Overseas Students Act 2000](#) (the ESOS Act), and subordinate instruments.
7. TEQSA will consider any complaint and determine whether or not it relates to the TEQSA Act or the ESOS Act. Complainants are not expected to be aware of, or to



- describe in their complaint, the relationship between the material of their complaint and a specific non-compliance with the requirements of those Acts.
8. Where a complaint falls outside TEQSA's remit, the complainant will be informed of any other agencies to which the complaint may be referred.
 9. TEQSA does not restrict the manner in which a complaint may be made. However, in general, complaints should be submitted using an online Complaint form [<https://www.teqsa.gov.au/complaint-form>](https://www.teqsa.gov.au/complaint-form)
 10. Complaints are handled in accordance with TEQSA's privacy and confidentiality obligations. In particular, to the extent that TEQSA proposes to disclose a complainant's personal details, the complainant's consent will be sought.
 11. Subject to TEQSA's confidentiality obligations, complainants are informed of how TEQSA may use a complaint, or the action TEQSA may take in response to a complaint.
 12. In notifying complainants of the outcome of our consideration of their complaint, we also notify them of their capacity to make a complaint about TEQSA's handling of their complaint.
 13. In addressing a complaint about a registered higher education provider, TEQSA will consider the extent to which a complainant has accessed a provider's internal complaints procedures, and where applicable, the option for an independent review of the complaint.
 14. All complaints are systematically recorded in a way that enables effective reporting.

Contact

Any enquiries about TEQSA's Complaints about providers policy can be directed to: complaints@teqsa.gov.au.



Australian Government

Tertiary Education Quality and Standards Agency

Concerns and complaints about providers policy

September 2021

TEQSA

Purpose

This policy sets out the principles for how TEQSA manages concerns and complaints (collectively referred to as concerns) about regulated entities under TEQSA's legislative framework.

Scope

This policy relates to concerns about registered higher education providers. It does not extend to complaints about TEQSA's processes, staff or resources, or about TEQSA's regulatory decisions. For information on these topics, refer to [Complaints about TEQSA](#).

Principles

These principles are intended to ensure TEQSA applies a consistent, efficient and respectful approach to managing concerns to support TEQSA's regulation of the Australian higher education sector.

Principle 1: TEQSA's role in receiving concerns

1. TEQSA's functions are established under section 134 of the *Tertiary Education Quality and Standards Agency Act* (TEQSA Act) and include "collecting, analysing, interpreting and disseminating information relating to higher education providers, regulated awards quality assurance practices and quality improvement, and the Higher Education Standards Framework."
2. Concerns are an important source of intelligence to identify risks of non-compliance with a provider's obligations under TEQSA's legislative framework.
3. TEQSA is not a complaints resolution body and typically does not have a role in addressing individual complainants' grievances. We prioritise broader, systemic issues and are unlikely to pursue matters that:
 - a. are one-off, isolated events, unless the conduct involves wider implications for students, staff, or the quality, integrity or reputation of the higher education sector
 - b. have not been considered through the provider's complaints handling processes
 - c. are solely for the purpose of obtaining redress for students or staff, unless there is clear evidence of deficiencies in the provider's complaint handling processes.
4. Anyone can raise a concern with TEQSA. Concerns should be submitted using the [online form](#) as the preferred method, however the method is not restricted.
5. All providers are required to have complaints handling processes capable of resolving complaints. This includes providing access to an independent third-party review if needed.
6. TEQSA encourages individuals to consider raising concerns directly with the provider, where appropriate, using the provider's complaints handling process. Doing so may result in a more timely and effective resolution with the provider.

Principle 2: Protection of information

7. TEQSA accepts information from anonymous sources about higher education providers. TEQSA determines how to proceed in these circumstances based on the quality of the

information available. TEQSA's capacity to progress matters raised anonymously may be limited if further information is required.

8. TEQSA handles the personal information¹ of any individuals it collects in managing concerns in accordance with the *Privacy Act 1988 (Cth)* (Privacy Act) and TEQSA's Privacy Policy and Privacy Management Plan.
9. TEQSA will usually only disclose an individual's personal information outside of TEQSA, for example to the higher education provider or another government agency, with the individual's consent. TEQSA requests consent to disclose the personal information provided in the concern to the provider and/or to another government agency (where applicable) at the time the concern is submitted. This consent is voluntary. For more information about how TEQSA collects, uses and discloses personal information, refer to TEQSA's [Complete APP Privacy Policy](#).

Principle 3: Respectful engagement

10. TEQSA is committed to being respectful, responsive, fair and consistent in the way it manages concerns.
11. All concerns are recorded and carefully reviewed to determine the appropriate response.
12. If contact information is provided, TEQSA will acknowledge receipt of a concern in writing within 5 working days.
13. If the concern is outside TEQSA's remit, TEQSA will either refer the matter to the relevant government agency where appropriate and where the individual has provided consent to do so, or direct the individual to the relevant organisation that may assist.
14. TEQSA may contact the individual who raised the concern to request more information.
15. Subject to TEQSA's confidentiality obligations, TEQSA will advise the individual of the outcome of TEQSA's consideration of the information they submitted. TEQSA will also provide information on how to make a complaint about TEQSA's handling of their concern.

Principle 4: Risk-based approach

16. TEQSA takes a risk-based approach to considering concerns and deciding the appropriate response, guided by TEQSA's compliance priorities.
17. TEQSA does not investigate every concern and will generally only take action on concerns where there is a serious risk to students or to the quality, integrity or reputation of the higher education sector, and where the concern relates to the provider's compliance with its obligations within TEQSA's legislative framework.
18. All concerns are recorded and may be used to inform future regulatory activity and identify risks. For example, TEQSA may take action where it identifies a trend in concerns raised.
19. TEQSA's regulatory response is guided by [TEQSA's approach to compliance and enforcement](#), including consideration of the basic principles for regulation in the TEQSA Act.
20. TEQSA will apply principles of procedural fairness in addressing concerns with providers.

¹ The meaning of personal information for this purpose is set out in the *Privacy Act 1988 (Cth)*.

Contact

Any enquiries about TEQSA's Concerns and complaints about providers policy can be directed to: concerns@teqsa.gov.au.



Consultation for proposed reworked sexual harm good practice note, and the associated wellbeing and safety guidance note, and student grievances and complaints guidance note

End Rape on Campus Australia

July 2023

About End Rape on Campus Australia

End Rape on Campus Australia (EROC Australia) is a not-for-profit organisation that 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.

Contact

Sharna Bremner
Founder & Co-Director

EROC Australia wishes to make clear that making a submission to the review of TEQSA's Guidance or Good Practice Note(s) does not imply that it endorses the contents of these, or any future versions of the Guidance or Good Practice Note(s). Furthermore, EROC Australia wishes to note that nobody from our organisation was an "author" of the previous version of TEQSA's *Good Practice Note: Preventing and responding to sexual assault and sexual harassment in the Australian higher education sector*, despite being listed as such.



TEQSA's proposed reworked guidance note

EROC Australia believes that TEQSA's proposed reworked sexual harm good practice note - and the associated wellbeing and safety guidance note, and student grievances and complaints guidance note - will be insufficient to address sexual assault and harassment within Australia's higher education sector.

We note that the existing sexual assault and harassment note was released in 2020, prior to the 2021 *National Student Safety Survey*. The NSSS demonstrated that little, if any, progress had been made by the university sector in reducing the prevalence of sexual assault or sexual harassment, in improving student's knowledge of where to access university policies or where to seek support at their institution, or in university responses to formal reports or complaints. This suggests that TEQSA's existing guidance was, at best, ineffectual.

Additionally, we wish to highlight that most university students are unaware of TEQSA's existence, let alone the existence of its guidance or good practice notes. Much more work would need to take place to raise student awareness of TEQSA and its functions for the guidance or good practice notes to have any impact on the group most impacted by the issues the notes seek to address.

Recommendations

EROC Australia recommends, that if TEQSA is intending to meaningfully engage in this issue, that instead of reworking the existing guidance note, it strongly considers undertaking extensive and meaningful consultations with a view to producing a guidance note that:

- is driven by experts in sexual violence prevention and response,
- considers the views and experiences of students, including students who have been impacted by sexual assault and harassment within higher education settings,
- enables genuine oversight of the higher education sector's prevention and response efforts, and
- embeds mechanisms for enforcement and accountability.

The need for genuine oversight and accountability

The scale of sexual violence experienced by Australia's university students has been well established by two national surveys and accompanying reports – the Australian Human Rights Commission's 2017 *Change the Course* report and the 2022 Social Research Centre's *National Student Safety Survey* (NSSS) report.



The NSSS revealed that the prevalence of sexual violence had remained unacceptably high, and highlighted concerning low levels of knowledge among students about their institution's sexual assault and harassment policies or how they could seek support from their university. Additionally, the NSSS demonstrated that very few students who filed a report were satisfied with their university's processes (see Appendix A).

The findings of the NSSS contradict claims by the university sector that it had taken substantial steps to prevent and improve responses to sexual assault and harassment in the five years since the release of the *Change the Course* report. It has become abundantly clear that without oversight, enforcement and accountability, Australia's universities have not, and will not make the concrete steps needed to prevent and improve responses to sexual violence within their communities.

It is EROC Australia's position that without enforcement and accountability, TEQSA's reworked guidance note will be, at best, ineffective in delivering any meaningful improvement in the higher education sector's response to sexual assault and sexual harassment.

The need for genuine engagement and consultation

In addition to the need for oversight and accountability, it is EROC Australia's position that to be effective, TEQSA's reworked guidance note must be informed by the results of wide and proper engagement and consultation with a range of stakeholders, including:

- experts in sexual violence prevention and response,
- student representatives, including those from groups who are disproportionately impacted by sexual assault and harassment within education contexts, such as students with disabilities, LGBTQ+ students, Aboriginal and Torres Strait Islander students and international students, and
- students who have experienced sexual assault and sexual harassment within a higher education context, including students who have engaged with their institution's formal complaints processes.

This consultation must be thorough and genuine and consist of more than simply asking for feedback on existing documentation.



Appendix A

The Australian Human Rights Commission's 2017 *Change the Course* report revealed that 1.6% of Australia's university students were sexually assaulted in a university setting on at least one occasion in 2015 or 2016. With approximately 1.4 million students attending Australian universities in that period, which equates to 215 sexual assaults occurring within a university setting *per week*. In that same period, 6.9% of all university students were sexually assaulted across any contextⁱ.

The results of the second national survey, the *National Student Safety Survey* (NSSS) which was undertaken in 2021, confirmed that little progress has been made in reducing the prevalence of sexual violence within university communities, despite the promises made by universities following the release of the *Change the Course* report in 2017. The NSSS found that 1.1% of the 1.3 million students studying at an Australian university had been sexually assaulted within a university context within the previous 12 months – equating to 14,300 sexual assaults per year, or a staggering 275 sexual assaults occurring within a university context each week, every week.

Strikingly, at the time the survey was conducted in 2021, just one in three student respondents were taking some or all of their classes on campus as a result of the pandemic. It is likely that the prevalence of sexual assault within a university context would likely be much higher now that students have returned to campus full time.

The NSSS also highlighted that disturbingly few students know about their institution's sexual assault and harassment policies or where to seek support, with more than half of the respondents saying that they knew "very little or nothing" about the policies or where to seek assistance within the university.

Concerningly, of those who reported an incident of sexual assault in 2021, just 29.7% were satisfied with their university's processes. Perhaps more concerningly, reporting rates for both sexual assault (5.6%) and sexual harassment (3%) *decreased* from rates in the *Change the Course* survey period of 2015/16, when 6% of students who experienced sexual harassment and 15% of those who had been sexually assaulted reported it to their institutionⁱⁱ.

ⁱ Australian Human Rights Commission. (2017). *Change the course: National report on sexual assault and sexual harassment at Australian universities*, pp. 3-5. ('Change the Course').

ⁱⁱ Heywood, W., Myers, P., Powell, A., Meikle, G., & Nguyen, D. (2022). *National Student Safety Survey: Report on the prevalence of sexual harassment and sexual assault among university students in 2021*. Melbourne: The Social Research Centre, pp.1-8. ('NSSS Report').