

28 August 2023

Senate Legal and Constitutional Affairs References Committee
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Canberra ACT 2600

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Dear Committee members

**Senate inquiry into current and proposed sexual consent laws in Australia
The University's response to EROC's comments**

I refer to the letter from the Committee Secretary dated 9 August 2023 addressed to Mr Peter Varghese AO, Chancellor of The University of Queensland. We appreciate the opportunity to respond to comments about the University made by End Rape on Campus (EROC) in evidence received by the Committee on 27 July 2023 (EROC comments). The Chancellor has referred your correspondence to me for the purpose of responding on behalf of the University.

The Senate's inquiry into current and proposed sexual consent laws is important and the University offers its full cooperation to the inquiry.

All members of our University community should have access to a safe and respectful place to study and work. This responsibility, which extends to matters of sexual misconduct, is something the University takes very seriously.

The University has undertaken substantial work in recent years to increase awareness and to further educate our community about sexual misconduct and to improve confidential and trauma-informed support and reporting based on respect and empathy.

I acknowledge that while a lot has been done, the prevalence of sexual harassment and sexual assault in society means that we need to remain vigilant in our efforts, working as a sector with government and advocacy organisations, to effect real change.

Request for consideration

I respectfully request the Committee treat Annexure 1 to this letter as confidential,

Responding to the student cases referred to by EROC

In relation to the student matters referenced in EROC's comments, I want to assure the Committee that the University took the students' complaints seriously, and investigated and determined the allegations in accordance with its policies and procedures that were in place at the time. It did so whilst providing support to those students, primarily via the University's Sexual Misconduct Support Unit (**SMSU**).

Our policies and procedures are concerned with whether a student has engaged in 'misconduct'. The University does not have the jurisdiction to, and does not purport to, determine whether students have engaged in conduct which amounts to an offence under the criminal law.

We have acknowledged the feedback by the students and EROC on these matters, as well as our reflections on what we could have done better, which has helped to inform some of the work we have undertaken over the past 5 years.

First matter: Student incident at a residential college

The University was contacted by the student (Student A) in September 2017 seeking support following alleged conduct in the nature of sexual harassment at a residential college by another student (Student B).

The University investigated the allegations in accordance with our disciplinary policies and procedures at the time and found Student B to have engaged in misconduct. Penalties were imposed, including prohibiting him from following or approaching within 25 metres of Student A. The findings were recorded on the University's Misconduct Register.

We note that Student A sought the University to remove Student B from the residential college where they both lived. This was not a decision in the University's power to make as the residential college is independently operated.

Prior to the disciplinary process concluding, Student A decided to leave the residential college. The University had found Student A an alternative place to live and offered support with relocating. I understand that Student A declined the offer, as she was going to live in a shared house with friends. The University was in regular contact with Student A up until the point she left the University, and at no point did we become aware that she did not have suitable accommodation.

From the time that Student A made her complaint to the University, the University provided her with support, including academic and examination adjustments and access to counselling, financial and other assistance the details of which are included in Annexure 1.

Student B was also the subject of other later allegations made by Student A. Annexure 1 outlines the actions taken by the University in accordance with our policies and procedures.

Second matter: Additional allegations relating to Student B

In relation to the second matter, the same respondent student (Student B) was the subject of allegations of conduct in the nature of sexual assault made by another student complainant (**Student C**). As stated above, the University does not have jurisdiction to, and does not purport to, determine whether its students have engaged in conduct which amounts to a criminal offence. The University's student disciplinary proceedings are directed at determining whether students have engaged in misconduct as set out in our policies and procedures.

In this instance, the University did not find that Student B had engaged in misconduct.

As was the case with Student A, Student C was provided with access to the full range of the University's support services under its Sexual Misconduct Policy.

TEQSA compliance assessment

EROC made complaints to the Tertiary Education Quality and Standards Agency (TEQSA) about the University's handling of sexual misconduct allegations by students, including in relation to the allegations made by Student A.

The University fully cooperated with TEQSA's compliance assessment, which commenced in August 2018 and concluded in October 2020. We provided extensive and detailed information and hundreds of documents, including in relation to the above two cases.

At the conclusion of its compliance assessment, TEQSA notified the University that it was satisfied that:

- the University had a framework of policies, processes and activities in place to foster and maintain student wellbeing and safety;
- the University provides well-resourced and competent support to students who have experienced sexual assault and sexual harassment; and
- the University is committed to continuous improvement of its sexual misconduct framework.

Balancing a trauma informed approach with procedural fairness

Matters involving allegations of sexual misconduct in university settings can have life-changing outcomes for complainants and alleged perpetrators. Whilst the University supports victims by providing a safe and trauma-informed approach to the management of complaints, it must also ensure that a student that is the subject of allegations is afforded procedural fairness in any disciplinary processes arising from a complaint. Failure to do so can place the University's decision-making processes in sexual misconduct matters at risk of being stayed by the Supreme Court of Queensland.

As an example of the Court intervening in University disciplinary processes, on 20 November 2019, the Supreme Court of Queensland made orders restraining the University from proceeding with a disciplinary proceeding against a student who was alleged to have engaged in conduct in the nature of a sexual assault.¹ This case challenged the jurisdiction of the University to discipline a student over conduct that might also amount to a criminal offence of a sexual nature.

While the University's subsequent appeal² was not successful, the Court of Appeal:

- confirmed that the University had jurisdiction to discipline its students that engage in misconduct in accordance with its own policies and procedures, even where that conduct could also amount to a criminal offence of a sexual nature if separately proven in a court exercising criminal jurisdiction;
- however, raised concerns about whether the University's disciplinary policies and procedures (being those that were in force during the disciplinary proceedings brought against Student B) were capable of affording a respondent student procedural fairness.

The comments of the Court of Appeal about affording a respondent student procedural fairness raised concerns about whether future disciplinary proceedings against a student in relation to alleged sexual misconduct would be exposed to court challenges restraining the University from dealing with such allegations under its policies.

Independent review

Following publication by the Australian Human Rights Commission of the *Change the Course: National Report on Sexual Assault and Sexual Harassment at Australian Universities 2017* report, the TEQSA compliance assessment, as well as the court case referred to above, I determined that the University would engage external experts – Adjunct Professor John McKenna KC and Emeritus Professor Carol Dickinson – to undertake a broad-ranging review of our student disciplinary policies and procedures, and their implementation, including in relation to the management of sexual misconduct.

The review, which is publicly available and has been shared with staff and students, made 30 recommendations – all of which were endorsed by the UQ Senate in December 2020.

¹ *Y v The University of Queensland & Anor* [2019] QSC 282

² *The University of Queensland & Anor v Y* [2020] QCA 216.

A working group was established to oversee the implementation of the recommendations, including re-writing the policies and procedures constituting the University's student disciplinary framework, and strengthening the University's policy and procedure framework for preventing and responding to sexual misconduct impacting members of the University's community. Those changes to our policy and procedure framework took effect from 1 January 2022.

The outcome report also acknowledged the challenges of implementing a trauma-informed approach to dealing with allegations of sexual misconduct, while administering a student disciplinary system that provides procedural fairness to the respondent student so that it will withstand judicial scrutiny.

In relation to the University's trauma-informed response to allegations of sexual misconduct, the reviewers found:

"Victim Support - By its recent efforts, the University has succeeded in developing effective, responsive and compassionate systems to support students who have been the victims of crime, including sexual assault. These systems are based upon a co-ordinated response from a number of different agencies within the University. These systems, and the staff who work in this area, are another considerable strength of the University's approach. We do not suggest that any material changes to these systems are required."

In relation to student disciplinary matters involving allegations of sexual misconduct, the reviewers found:

"Difficult Cases – Sexual Misconduct - The most difficult issue to be considered is how to reconcile a trauma-informed approach to supporting victims of sexual misconduct with the legal requirements involved in taking disciplinary proceedings against the perpetrator. Unfortunately, we are unable to suggest a procedure by which matters of sexual misconduct, if genuinely disputed, can be determined without the risk of the complainant being involved in the proceedings. In cases where the complainant wishes the University to take disciplinary action, but does not wish to be involved in the proceedings, we believe the only viable procedure is pursuant to the University's power to counsel students and give reasonable directions. We recommend that a fact sheet be prepared, which fairly and accurately explains the main legal options available to complainants and their advantages and disadvantages. The appropriate use of this fact sheet, in a particular case, is a matter for the support staff to determine."

Details of that work undertaken to implement the recommendations and additional actions are included in Annexure 2 to this letter.

Hiring of Student B

The hiring team were not aware of the misconduct findings against Student B when he was engaged as a casual tutor.

Since then, we have taken steps to strengthen our HR processes to ensure to the full extent possible that we give better consideration to whether a potential employee has engaged in conduct that could compromise the wellbeing and safety of other members of the University community if they were to be employed.

Relationship with residential colleges

There are 10 residential colleges next to our main campus that are independently owned and operated. We do recognise the need for greater alignment and collaboration on how incidents at the colleges are managed, even though they are independent entities.

We have established a steering committee with the colleges to ensure core policies align on the prevention and management of sexual misconduct, and more effective and transparent sharing of information and training.

Operational and governance infrastructure to prevent and respond appropriately to sexual misconduct

In addition to the recommendations made in the independent review by McKenna and Dickinson, the University has continued to make improvements, with initiatives aimed at raising awareness, educating our community and providing confidential and trauma-informed support and reporting based on respect and empathy as set out in Annexure 2.

Given the importance of this matter, I personally chair the *Vice-Chancellor's Advisory Group on Sexual Misconduct: Prevention and Response*, which acts as the conduit between the University's operational and governance structures.

The Group monitors, assesses and reports on the University's progress on the prevention of and response to sexual misconduct within the University.

In closing, I would like to thank our staff and students for extensive work they have done to improve our processes and services, to expand and enhance the support provided and to educate our community. This work is making a difference.

In saying that, we also recognise the seriousness of this issue and given the scale of the social challenge that this work needs to continue. I am personally committed to ensuring this happens.

Please do not hesitate to contact me directly if I can be of further assistance to the Committee.

Yours sincerely

Professor Deborah Terry AO
Vice-Chancellor and President

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**Annexure 2 to letter from The University of Queensland dated 28 August 2023
Senate inquiry into current and proposed sexual consent laws in Australia**

1. The University's work in recent years to strengthen its framework for the prevention of, and response to, sexual misconduct within the University community can be broadly categorised into three areas:
 - (a) implementing the recommendations from the Australian Human Rights Commission report *Change the Course: National Report on Sexual Assault and Sexual Harassment at Australian Universities 2017 (Change the Course Report)*;
 - (b) implementing the recommendations from the broad-ranging review of the University's student disciplinary policies and procedures, and their implementation, including in relation to the management of sexual misconduct by Adjunct Professor John McKenna KC and Emeritus Professor Carol Dickenson (**McKenna & Dickenson Review**); and
 - (c) ongoing work under the oversight of the *Vice-Chancellor's Advisory Group on Sexual Misconduct: Prevention and Response* (and ultimately the UQ Senate).
2. Summaries of that work follows.

Implementing the recommendations from the Change the Course Report

3. The University, in response to the Change the Course Report in 2017, signalled its priority to be the adoption of a more trauma-informed response to sexual misconduct matters to ensure that students receive adequate care, are supported to make their own choices regarding their care, and have control over pursuing any formal reporting of incidents or not.
4. To that end, changes were made and improvements were introduced to ensure that sexual misconduct matters were handled in line with a more trauma-informed approach. Those changes and improvements included the following seven improvements.
5. *First*, the University established a Sexual Misconduct Support Unit (the **SMSU**) to enable students and staff to disclose their experiences in a safe and confidential manner, with staff members that include psychologists and counsellors who specialise in working with sexual misconduct matters.
6. Among other things, a key function of the SMSU is to provide trauma-informed support and counselling to sexual misconduct complainants and assist with recovery, via numerous mechanisms including the provision of reasonable adjustments.
7. *Second*, the University established a First Responder Network, which is a network of volunteers from various departments and units of the University who serve the role of:
 - (a) being first point of contact for people seeking help or support with regard to sexual misconduct (in addition to the SMSU, counselling services and an online anonymous sexual misconduct reporting system) and to refer complainants or request for support immediately to the SMSU to make a disclosure if that is their wish;
 - (b) assisting complainants in accessing services; and
 - (c) providing complainants the basic information to refer them to the SMSU for more detailed information.
8. These volunteers are specially trained to understand the principles of being trauma-informed when responding to a disclosure, and are provided with guidance and support by SMSU staff for handling sexual misconduct complaints with a trauma-informed approach.
9. *Third*, the University allocates a primary contact for complainants at the SMSU who assist in coordinating support and services, including by liaising with teams such as the Diversity, Disability and Inclusion Team to assist with academic adjustments. This practice ensures that complainants are not required to repeat their disclosures in full to access the complaints process or support services.

10. *Fourth*, the University has ensured that sexual misconduct training is provided to all staff involved in the management of sexual misconduct matters including those in the First Responder Network, counsellors, student advisors, staff in the Integrity and Investigations Unit (IIU), Heads of School, Senior Management Group and Heads of Colleges.
11. *Fifth*, the University created the 'UQ Respect' website which has created a central point for students and staff to seek information, report sexual misconduct matters and request support. the university has also implemented an online and anonymous sexual misconduct reporting system.
12. *Sixth*, the University made available additional sexual misconduct resources including recruitment of:
 - (a) two counsellors with expertise and experience in sexual trauma, to provide additional trauma-informed counselling services to sexual misconduct complainants and assist in the education and training of UQ community members in sexual misconduct related matters and other prevention activities and projects;
 - (b) a 'Sexual Misconduct Prevention and Response Coordinator', who is part of the SMSU and Student Services and whose responsibilities include educating campus personnel on how to appropriately handle reported sexual misconduct and providing support and assistance in connecting students to resources, as well as information about reporting options; and
 - (c) a new investigator, placed in the IIU, to ensure that the IIU has capacity to respond to complex complaints that may occur after the release of the Universities Australia first student survey on sexual misconduct results in August 2017.
13. *Seventh*, the University has overhauled its student disciplinary framework, particularly having regard to the complexities of determining allegations of sexual misconduct made against students as explained below.

Implementing the recommendations from the McKenna & Dickenson Review

14. Following publication of the Change the Course Report, the compliance assessment undertaken by TEQSA, as well as the decisions of the Supreme Court of Queensland and the Court of Appeal in the *Student Y case* concerning student disciplinary proceedings relating to an allegation in the nature of a serious sexual assault,³ the University engaged external experts – Adjunct Professor John McKenna KC and Emeritus Professor Carol Dickinson – to undertake a broad-ranging review of the University's student disciplinary policies and procedures, and their implementation, including in relation to the management of sexual misconduct. The outcome of the review, which was published to the University community by the Vice Chancellor on 21 May 2021,⁴ included specific findings and recommendations in relation to sexual misconduct. In particular, the reviewers grappled with the challenges of implementing a trauma-informed approach to dealing with allegations of sexual misconduct, whilst administering a student disciplinary system that will withstand judicial scrutiny.
15. The UQ Senate endorsed the 30 recommendations of the McKenna & Dickenson Review in December 2020 and, on Senate's instructions, the Student Disciplinary Policy & Processes Review Implementation Working Party (**SDRIWP**) was established shortly thereafter to support the operationalisation of the recommendations.
16. The SDRIWP oversaw the development of a new student disciplinary policy framework comprising the:
 - (a) Student Integrity & Misconduct Policy;
 - (b) Student Integrity & Misconduct Procedure;
 - (c) Student Code of Conduct Policy;
 - (d) Sexual Misconduct Prevention & Response Policy;

³ *Y v The University of Queensland & Anor* [2019] QSC 282; *The University of Queensland & Anor v Y* [2020] QCA 216.

⁴ Published at <https://www.uq.edu.au/news/article/2021/05/supporting-people-impacted-sexual-misconduct>.

- (e) Sexual Misconduct Prevention and Response for Students Procedure; and
 - (f) Sexual Misconduct Prevention and Response for Staff Procedure,
- including by way of extensive consultation within the University from key stakeholders, including students and academic and professional staff.
17. The revised policy framework was approved by the UQ Senate in November 2021 to come into force in January 2022. The University supported the adoption of the revised policy suite by way of strategies including:
- (a) targeted communications to key impacted staff across the University;
 - (b) specific training on managing sexual misconduct matters for senior employees of the University likely to be involved in responding to sexual misconduct matters, including Student Disciplinary Board members, the University's IJU staff and employees in senior management roles in Faculties and Schools;
 - (c) comprehensive on-line training with respect to Complaint & Misconduct Management, maintained and accessed by staff through the University's Human Capital Management System, WorkDay, and by student representatives via other access points;
 - (d) publication of guidelines for the Student Integrity & Misconduct Policy and the Student Code of Conduct in the University's Policy and Procedure Library; and
 - (e) publication of draft templates, FAQs and other resources to the University's Student Complaints and Grievance Resolution website.
18. Further to the revisions to the student disciplinary policy framework, the University also implemented improvements to its 'UQ Respect' website to address recommendations raised in the McKenna & Dickenson Review.

Ongoing work under oversight of the Vice-Chancellor's Advisory Group on Sexual Misconduct: Prevention and Response

19. In 2018, the Vice-Chancellor's Advisory Body on Sexual Assault and Sexual Harassment – now the Vice-Chancellor's Advisory Group on Sexual Misconduct: Prevention and Response (**Advisory Group**) – was established. The terms of reference of the Advisory Group have evolved in accordance with relevant events (such as, for example, publication of the Change the Course Report and the McKenna & Dickenson Review).
20. The Advisory Group is currently responsible for monitoring, assessing and reporting on the University's progress on the prevention of and response to sexual misconduct within the University and acts as the conduit between the University's operational and governance structures in relation to this important topic.
21. For example, the Advisory Group oversees the University's progress on prevention actions undertaken as part of the University's 'Strategic Framework and Action Plan for Sexual Misconduct Prevention and Response', which include:
- (a) an online module for students on sexual misconduct (**UQ Respect Module**), which the University has determined to mandate for all students in line with a decision by the Group of Eight (Go8) to introduce mandatory consent education for all students;
 - (b) student-focused consent and respect campaigns;
 - (c) implementation of the Sexual Misconduct Policy and Procedures (as referred to above);
 - (d) provide support to independent residential colleges to update policies and procedures where necessary;
 - (e) consent, compassionate response and respectful relationships training;
 - (f) respectful supervisory relationships campaigns;
 - (g) sexual misconduct prevention and respectful campus culture training;

- (h) ethical bystander campaigns;
- (i) first responder training (eg. Listen, Support, Refer campaign);
- (j) awareness campaigns, including the 'For Crying Out Loud' campaign which is a primary prevention campaign which aims to shine a light on sexual violence and harassment experienced by LGBTQIA+ communities at university, and calls for social change to end violence experienced by LGBTQIA+ communities;
- (k) the operation of the First Responder Network;
- (l) SMSU awareness and support, including development of a student-facing guide to accessing the SMSU; and
- (m) implementation of improvements in reporting, data tracking and collection.