

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

**Thursday, 27 July 2023 - Sydney**

### **Questions on Notice – End Rape on Campus Australia**

#### **Question:**

In your experience, what measures should universities have in place to ensure survivors are not forced to attend the same class or the same tutorials as their rapists or harassers?

#### **Answer:**

Each university has a policy in place that outlines behaviour expectations for its students and staff, typically referred to as a Code of Conduct or similar. In addition, following the 2017 Australian Human Rights *Change the Course* report, most institutions implemented standalone sexual assault and sexual harassment policies.

One or both policies usually contain provisions that allow the university to implement interim measures, such as refusing access to certain parts of the campus including lecture theatres, tutorial and seminar rooms and other learning and teaching spaces, while the university investigates complaints of misconduct. These policies, which students agree to adhere to when enrolling at their institution, also allow for these measures to be permanent if a finding of misconduct is made.

It is our experience that universities are often unwilling to apply these measures in cases involving sexual assault and/or sexual harassment, despite them being willing to apply them in other cases of misconduct.

It is sometimes the case that a victim-survivor wishes to amend their schedule and switch to a different lecture/tutorial/seminar time, as opposed to waiting for the university to change the classes of the person who harmed them. It's our experience that universities can be unwilling to permit these changes, often citing that other scheduled classes have reached capacity and are unable to accommodate an additional student. Universities have also been unwilling to permit victim-survivors to complete their course work through alternative methods or modes, including through virtual or remote attendance or alternative assessments. This is particularly important for international, study abroad and exchange students, who may wish to return to their home country following an assault.

EROCAustralia believes that universities should, at a minimum:

- Immediately implement interim safety measures when a student reports an incident of sexual assault or sexual harassment, including limiting the access of the accused student to on-campus spaces that the victim-survivor accesses to attend learning and teaching activities. If these spaces include commonly-accessed areas, including campus libraries, computer rooms or other shared study areas, the university should establish a schedule that allows both students to access the spaces in designated times.
- Permit student victim-survivors to amend their class schedules to attend at an alternative time, if they request to do so.
- Ensure that investigation processes are completed in a timely manner, so that disruptions to students' schedules are minimised.

- Permit student victim-survivors to access alternative methods or modes of study, including through alternative assessment options, alternative exam arrangements and the ability to complete coursework remotely.

**Question:**

What support should unis provide to survivors to finish their degrees?

**Answer:**

Students who have been impacted by sexual assault or harassment often have a range of complex needs. In many cases, these needs are not met by the systems in place at universities for responding to requests for support. Part of the problem is the lack of a holistic approach to supporting survivors.

Sexual assault can cause not only psychological and medical issues, but also financial stress, difficulty with academic tasks, the need for legal support, and housing issues, amongst others. In many cases, universities fail to make the connection between these needs and a student's academic outcomes. It is our experience that if a student's support needs are met, they are far more likely to continue to successfully engage in their education and finish their degree.

To support student survivors to finish their degrees, university should ensure they are providing them with:

- **Safety and control** – Because sexual assault robs an individual of power and control, any actions which further strip a person of control or autonomy may exacerbate feelings of powerlessness. For example, forcing a person to report to police or university security may seem well-intentioned, but in many cases, this can re-traumatise a person by increasing feelings of powerlessness and lack of control.

It is EROC Australia's experience that students who have reported a sexual assault to their university often feel unsafe on campus, as universities are slow to implement interim safety measures, or to remove offenders from the university community. Students who continue to feel unsafe are often unable to attend campus to go to class, access academic support or the library, and many withdraw as a result.

Students who are sexually assaulted in university accommodation, such as residential colleges, purpose-built student accommodation, or university halls of residences often feel unsafe on campus *and* in their living environment. There are approximately 220 residential facilities associated with universities across the country. These facilities may be owned by a university, privately owned with a contractual relationship with a university, or operate completely independently from any university. This creates a series of complicated, overlapping (and sometimes contradictory) reporting systems. It is often the case that universities defer responsibility for assaults that occur in residences to residential managers, leaving student victim-survivors to navigate two reporting process, which may have different outcomes.

Student accommodation is facing ever-increasing shortages, with demand outstripping supply. This means it is increasingly difficult for students who have been sexually assaulted in their accommodation to move rooms, or to change residences altogether.

Universities can support students to continue their studies following a sexual assault by ensuring that they retain control over decisions made in response to their assault, and by ensuring that they take the necessary steps to help students to feel safe on campus and within their accommodation.

- **Assistance to access any necessary medical care** – Universities often fail to provide student survivors with comprehensive information about accessing medical care in the aftermath of an assault. This is particularly harmful for international students, who may not have a robust understanding of the local healthcare system or whose language skills may prove a barrier to accessing and understanding the services available to them. There may also be cultural reasons as to why they do not want to disclose sexual assault to a medical service, or they may fear their parents/families at home finding out.

In some cases, international students who do not have Medicare coverage may fear that services such as forensic medical exams and sexual health clinics would be prohibitively expensive. In Australia, anyone who has been subjected to a violent crime such as rape is supposedly entitled to all associated medical and forensic procedures, regardless of whether they hold a Medicare card. However, EROC Australia is aware that international students who have experienced rape have sometimes been wrongfully turned away from Emergency Rooms because they did not have Medicare cards.

Universities can assist students by demystifying this process and ensuring that information is made widely and easily available to students regarding their rights and their options of where to get medical help. This is especially important for vulnerable groups such as international students, LGBTIQ students, students who work as sex-workers, and students with disabilities.

- **Safe, accessible, trauma-informed reporting and investigation processes** – It is our experience that students who struggle to locate their institution’s reporting processes, or who experience unsafe or unsatisfactory reporting processes experience disruptions to their academic progress. Students that we have supported who have engaged in their university’s reporting process often state that reporting the incident had a negative impact on their academic progress, as they find the process retraumatising, time-consuming and ultimately fruitless without any steps taken to improve their safety in the university community.

We believe that universities are still failing to adequately promote or publicise formal reporting options, and have found that many are continuing to use euphemisms for the webpage and/or department that holds responsibility for receiving reports, such as “Safer Communities” or “Respect. Now. Always”<sup>i</sup>. Students, particularly those experiencing the impacts of trauma, report that they simply give up looking for information if it is too difficult to locate.

In our experience, students often disclose to individuals who may have no training, or limited formal training, such as sessional tutors, who are often perceived as more accessible to students as they spend more face-to-face hours with them. Additionally, tutors are often able to provide students with the academic accommodations they're seeking, meaning they regularly a first point of disclosure. This creates a risk both for the survivor and for the untrained person who may also feel overwhelmed, powerless and distressed. Despite this, tutors are rarely, if ever, offered training in responding to disclosures, or vicarious trauma support.

EROC Australia is aware of reporting and processes that are not accessible for students with disabilities. At one university, the online reporting portal is not compatible with screen reading software used by students with vision impairments. Few universities provide reporting options for students with hearing impairments, such as the ability to have an ASL interpreter present. We were recently informed of a student who uses a wheelchair who was told they needed to attend an office in-person to make a report, but the office was in a building that was not wheelchair accessible.

Student survivors that we support continue to report that they have experienced unsupportive or unhelpful responses upon filing a report with university staff, such as being asked by "are you sure?", "what were you wearing?", and "how can you remember if you were that drunk?". Many student survivors are informed by university officials that they must not tell anyone about their report, or they themselves will be subject to disciplinary action for "privacy breaches".

A key concern is university reporting processes that are opaque and take significant periods of time to be resolved. Students who have filed reports are not provided with sufficient information about the progress of their report or the steps being taken throughout the investigation. Most of the student victim-survivors that EROC Australia supports have endured reporting processes that take more than two months to be resolved, with some taking more than a year.

Finally, many universities continue to claim that they cannot provide a student victim-survivor with the outcome of their complaint. This is typically attributed to "privacy reasons". The impact of this on student victim-survivors, however, can be devastating. They are unsure if the person who harmed them is still permitted to be on campus and their trust in the university is shattered. This can significantly damage their ability to focus on their studies.

Universities could support students to complete their studies, and graduate, by ensuring that their reporting and investigation processes are student-centred, trauma-informed and provide timely and transparent outcomes.

- **Regular, ongoing counselling** - Following an assault, survivors might experience a range of psychological impacts including Post-Traumatic Stress Disorder (PTSD), depression and

anxiety. Due to the serious nature of these impacts, many survivors require access to university counselling services following an assault. However, students who require counselling often face a range of obstacles. These services are often understaffed or underfunded, making it difficult for students to secure appointments.

In some cases, students face wait times of over a month, and this can increase in periods of peak demand, such as around exam time. In other cases, students are allotted a limited number of counselling sessions – at some institutions, this is limited to just six sessions per academic year - so even when they do build a relationship with a counsellor, they cannot continue to receive counselling after their assigned numbers of sessions are over.

Students who are at increased risk of being assaulted, such as First Nations students, LGBTQI+ students, international students and students with disabilities often report that their institution does not provide counselling services that meet their specific needs. For example, counselling is rarely offered in languages other than English. Most universities do not provide counselling that considers the cultural needs of First Nations students, and many do not provide services that accommodate the needs of students with disabilities.

Providing students with ongoing trauma-informed and culturally-appropriate counselling would assist them to mitigate the mental health impacts of sexual violence and enable them to better focus on their studies.

- **Academic assistance and accommodations** – Providing students who have been impacted by sexual violence with academic assistance and accommodations can significantly increase the likelihood of them successfully completing their studies. Student victim-survivors may require assistance in the form of:
  - Extensions on their academic assignments
  - Time off from lectures or classes
  - Changes to timetabling arrangements (particularly if they share classes with the perpetrator)
  - Alterations to their enrolment (for example, dropping or deferring study or going part time)
  - Exam considerations (including completing substitute home exams); and
  - Special allowances for international students who wish to return home early.

However, survivors report that it can be both difficult and distressing trying to obtain extensions, special considerations or other forms of academic assistance. Most universities require formal medical documentation confirming that they have a diagnosed disability or condition, and demonstrating the “functional impact” of that disability or condition, in order for a student to access academic accommodations. Even if students have a diagnosis of an ongoing disability, such as post-traumatic stress disorder, they are often required to provide new documentation each semester. This process can be distressing for students who have been assaulted, as it may require them to repeatedly disclose to medical staff such as GPs and psychologists, and it can incur additional costs that students aren’t able to meet, particularly if they have exhausted their Medicare-subsidised psychology appointments

before they can obtain the necessary documentation. Many students choose not to seek academic accommodations because of the onerous nature of these processes, which impacts their ability to succeed in their studies.

Reducing the number of people a student needs to disclose their assault to, and reducing the burden of providing repeated evidence of an ongoing disability in order to access basic academic accommodations would help to enable student victim-survivors to complete their studies.

**Question:**

What should unis do to ensure that tutors and lecturers don't have a history of sexual harassment and assault?

**Answer:**

It is EROC Australia's experience that most universities do not require staff, including teaching staff or staff who regularly engage with students, to undergo standard police/background checks to ensure that they do not have a criminal history of sexual abuse. This is despite the fact there are large numbers of minors enrolled at institutions across the country.

Additionally, it is often the case that reports of sexual assault and/or harassment filed within the university itself are not shared with those in charge of hiring processes, including department and school heads, or human resources departments. The nature of sessional employment within universities, particularly in roles as unit tutors, means that students can become employees. A lack of information sharing at many institutions means that this can occur even if multiple reports of sexual assault or harassment have been made against a student.

Universities should ensure that staff are required to undergo minimum police/background checks to ensure that those being hired in positions where they will have access to students do not have histories of using sexual violence. Similarly, internal checks should be run to ensure that people being hired do have non-criminal histories of sexual assault and/or sexual harassment.

**Question:**

What should [universities] do to make sure that they do in fact know better [than to assume international students understand the meaning behind euphemistic slogans such as "Respect. Now. Always."] and know what they should have said instead of that response [laughing at a student who said she didn't realise that "Respect. Now. Always." referred to reporting sexual violence]?

**Answer:**

Universities should, wherever possible, ensure that all of their verbal and written communications about sexual violence, reporting sexual violence and seeking support following sexual violence, uses plain language that is accessible to all student cohorts. This requires avoiding the use of jargon or euphemisms.

Universities should ensure that they provide all new students with clear, detailed information about how to report sexual violence at their institution, and that this information is easily accessible and understandable on university websites.

Additionally, universities should ensure that *all* members of their community, including staff, receive expert-led, evidence-driven respectful relationship and sexuality education that addresses myths and stereotypes about sexual violence. Staff who are likely to receive disclosures of sexual violence should be provided with training in responding to disclosures and support for vicarious trauma.

Critically, universities must ensure that any staff who are tasked with receiving or responding to reports of sexual violence are appropriately qualified and have undergone relevant training to ensure that their responses to students are student-centred, trauma-informed, and culturally appropriate.

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<sup>i</sup> 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.