



Senate Education and Employment Committees – Higher Education Support Amendment (Response to Australian Universities Accord Interim Report) Bill 2023 [Provisions]

Public Hearing – 8 September 2023

End Rape on Campus Australia wishes to provide the below responses to evidence given by the Tertiary Education Quality and Standards Agency (TEQSA) at the Senate Education and Employment Committee Higher Education Support Amendment (Response to Australian Universities Accord Interim Report) Bill 2023 [Provisions] public hearing on Friday, 8 September 2023.

Chair: Thank you very much. I'll start with one question before I hand over to another senator. There was evidence earlier today, which you may have heard, from student representatives, particularly looking at student groups that deal with the issues of rape and sexual assault at universities. They said—and I'm going to paraphrase it; this is the way I understood it—that, since 2021, students have not been clear, and they have not been clear, about the processes of raising issues of sexual assault with TEQSA when they have concerns about university processes that have taken place, and they felt that, where they have raised matters with TEQSA, they have had to withdraw those matters because of further harm being caused to the applicants who were making complaints. I'm not putting to you specific examples, because they didn't raise it to us that way. They are concerning perceptions, at least, if not reality, but it is also concerning that it could be reality. So I think you should have an opportunity to make some observations in response to those comments.

Ms Nieuwenhuis: We accept that there is frustration from certain student groups with regard to the scope of our powers, which are only to look at complaints from the perspective of the university's or the provider's policies, procedures and approach to managing a particular sexual harm complaint. We do not have the scope to re-investigate a sexual assault incident. So there is frustration from those groups that our powers are limited and that perhaps we are not achieving the sorts of outcomes that they may expect, particularly from victims of sexual assault who are distressed.

We work very hard to ensure that complainants remain confidential. They even remain confidential from the university, the provider, from which they are making the complaint. We work very hard to ensure that complaints are managed appropriately and, in fact, we have worked hard as to the turnaround time from when we receive a complaint. We respond to that complaint as soon as possible—again, because we are mindful of the possible distressing situation of the person making the complaint. But I think I would need to have more direct information of their concerns for me to respond further.

Ms Quinn: I personally have met with these groups over recent months, and I'm very much aware of their frustration. We've had, I believe, very productive conversations to help us understand their perspective, and their frustration, I would say, at the system more broadly. In 2022, our compliance and investigations staff all completed training, organised by the Centre Against Sexual Assault House, about responding, when they are in contact with students. So I hope that there will be improved perception of TEQSA when they deal with us, moving forward.

Response from EROC Australia:



EROC Australia wishes to clarify that each complaint that it has filed on behalf of a student has been in relation to non-compliance with the *Higher Education Standards (Threshold Standards)*. These standards have included:

- Standard 2.3.1: All students are advised of the actions they can take, the staff they may contact and the support services that are accessible if their personal circumstances are having an adverse effect on their education.
- Standard 2.3.2: Timely, accurate advice on personal support services is available, including for access to emergency services, health services, counselling, legal advice, advocacy, and accommodation and welfare services.
- Standard 2.3.3: The nature and extent of support services that are available for students are informed by the needs of student cohorts, including mental health, disability and wellbeing needs.
- Standard 2.3.4: A safe environment is promoted and fostered, including by advising students and staff on actions they can take to enhance safety and security on campus and online.
- Standard 2.3.5: There is a critical-incident policy together with readily accessible procedures that cover the immediate actions to be taken in the event of a critical incident and any follow up required.
- Standard 2.4.1: Current and prospective students have access to mechanisms that are capable of resolving grievances about any aspect of their experience with the higher education provider, its agents or related parties.
- Standard 2.4.2: There are policies and processes that deliver timely resolution of formal complaints and appeals against academic and administrative decisions without charge or at reasonable cost to students, and these are applied consistently, fairly and without reprisal.
- Standard 2.4.3: Institutional complaints-handling and appeals processes for formal complaints 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.
- Standard 2.4.4: Decisions about formal complaints and appeals are recorded and the student concerned is informed in writing of the outcome and the reasons, and of further avenues of appeal where they exist and where the student could benefit.
- Standard 6.1.4: The governing body takes steps to develop and maintain an institutional environment in which freedom of intellectual inquiry is upheld and protected, students and staff are treated equitably, the wellbeing of students and staff is fostered, informed decision making by students is supported and students have opportunities to participate in the deliberative and decision-making process of the higher education provider.
- Standard 6.2.1j: The occurrence and nature of formal complaints, allegations of misconduct, breaches of academic or research integrity and critical incidents are monitored and action is taken to address underlying causes.
- Standard 6.2.1k: Lapses in compliance with the *Higher Education Standards Framework* are identified and monitored, and prompt corrective action is taken.

EROC Australia has not requested that TEQSA investigate, or reinvestigate, any incident of sexual assault or sexual harassment.



We remain confused by TEQSA's assertion that it accepts complaints from students, given this is a direct contradiction of information TEQSA has provided to EROC Australia and to the Commonwealth Ombudsman.

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 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. TEQSA advised that they 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 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 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.

EROC Australia confirms that it had a brief meeting with TEQSA in June 2023. Prior to this meeting, we had not had contact with TEQSA since 2021.

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. EROC Australia provided a written submission in response to TEQSA's call for responses to its consultation paper.

We have not had any further meetings with TEQSA since June.