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On Safe Ground

Strengthening Australian university responses
to sexual assault and harassment

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***On Safe Ground: Strengthening Australian university responses to sexual assault and harassment
A good practice guide for Australian universities***

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On Safe Ground

Strengthening Australian university responses to sexual assault and harassment

Andrea Durbach and Kirsten Keith

AHRC  NTRE
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Seeking assistance

The resources below may be of assistance to victims of sexual violence and those affected by its impact.

1800 RESPECT

24/7 National Sexual Assault, Domestic and Family Violence Counselling Service
Free and confidential call
1800 RESPECT (1800 737 732)
www.1800respect.org.au

LIFELINE – CRISIS SUPPORT

24/7 crisis support and suicide prevention services
13 11 44
www.lifeline.org.au

MENSLINE

MensLine Australia is a professional telephone and online support and information service for Australian men
24/7 free and confidential call 1300 789 978
www.mensline.org.au

EMERGENCY SERVICES

Emergency Services: 000
Police Assistance (non-emergency): 131 444
For cases that may constitute a criminal sexual offence, relevant state or territory police should be contacted.

END RAPE ON CAMPUS (EROC) AUSTRALIA

EROC Australia 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.
www.endrapeoncampusau.org/about/

AUSTRALIAN HUMAN RIGHTS COMMISSION (AHRC)

The AHRC investigates and conciliates complaints regarding sexual harassment and discrimination.
See: www.humanrights.gov.au/complaint-information

STATE & TERRITORY ANTI-DISCRIMINATION BODIES

Complaints about sexual harassment can be made to local state / territory anti-discriminatory bodies. Links to each state and territory body are at: www.ag.gov.au/RightsAndProtections/HumanRights/Pages/Australias-Anti-Discrimination-Law.aspx

OMBUDSMAN'S OFFICES

Complaints about public universities and higher education providers acting unfairly or mismanaging complaints of sexual assault and sexual harassment can be made to the relevant state/territory Ombudsman.
Links to each state and territory body are at: www.ombudsman.gov.au/about/related-sites#stateombudsman
International students at private higher education providers can make complaints to the Overseas Students Ombudsman.
See: www.ombudsman.gov.au/making-a-complaint/overseasstudents

TERTIARY EDUCATION QUALITY AND STANDARDS AGENCY (TEQSA)

Complaints relating to a university's learning environment that impact on the wellbeing and safety of students can be made to TEQSA which monitors compliance by higher education providers with the *Tertiary Education Quality and Standards Agency Act 2011* (Cth).
See: www.teqsa.gov.au/complaints

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Executive summary

[I]t is much easier to focus on the successes of an institution, rather than its failures. However, it is honourable to be able to acknowledge that we have failed; but that we refuse to continue to fail on this issue.

Sophie Johnston, former President, UNSW Student Representative Council,
at a screening of *The Hunting Ground* at UNSW Sydney, 2 May 2016

In September 2015, the Australian Human Rights Centre (AHRCentre) at the University of New South Wales was commissioned to undertake a major research project on the extent, nature and responses to sexual assault and sexual harassment within university settings across Australia.

The *Strengthening Australian University Responses to Sexual Assault and Harassment Project* was developed at the request of The Hunting Ground Australia Project, which was responsible for bringing the 2015 US documentary *The Hunting Ground* to Australia. *The Hunting Ground* had raised awareness of sexual violence and institutional failure among American universities, and contributed to an international upsurge of student activism to tackle sexual assault and harassment and hold perpetrators and institutions to account.

While global and national statistics have provided an indication of the persistent and pervasive levels of sexual assault and harassment across communities, it is only in recent times that data regarding the extent of – and responses to – the problem within the context of universities has emerged. In Australia, specific and robust data about university sexual violence has, until now, been lacking.

Similarly, while several countries have been proactive in their legislative and policy responses to sexual assault and harassment at universities, Australia has no explicit national legislative framework and Australian universities have comparatively weak arrangements to manage, redress and prevent university sexual violence.

The starting point for the AHRCentre's project was to build on the work of the Australian National Union of Students (NUS), university gender activists, academics and sexual violence practitioners who had been highlighting the problem of university sexual violence for many years.

The project's objective was twofold:

- (i) to ascertain comprehensive, independent statistical information about the nature and extent of sexual assault and harassment within Australian universities, the reporting experience of students, the impact of institutional responses and the sufficiency of relevant student support services; and
- (ii) to design a framework for use by Australian universities to develop and enhance policies and procedures to appropriately manage reports of sexual violence, to address its impact on the university's students, and to prevent its occurrence.

While the recent increased focus on university sexual assault and harassment has triggered important initiatives and strategies to manage, redress and prevent university sexual violence, these have primarily been directed at ad hoc and piecemeal remedial measures rather than the

development of a transformative approach. The project's aspiration was, therefore, to provide a cohesive framework that might assist Australian universities to adopt a more proactive and pre-emptive approach to addressing and preventing university sexual violence.

To ascertain the statistical information, the AHRCentre partnered with the Australian Human Rights Commission (the Commission) to develop an initial design of the first comprehensive national student survey on sexual assault and sexual harassment. The national student survey was implemented by the Commission and Universities Australia across all 39 Australian universities on an anonymous, confidential and voluntary basis between September and December 2016.

The national student survey not only confirmed earlier student surveys and anecdotal reports around prevalence but also, importantly, revealed institutional deficiencies around university responses, support services and prevention efforts.

An analysis of the Commission's report on the findings of the national student survey and online submissions revealed three significant factors:

- that, in line with findings by the NUS, there are concerning levels of sexual assault and harassment within Australian university settings;
- that women students, Aboriginal and Torres Strait Islander students, culturally and linguistically diverse students (CALD) and international students, students with disability, and LGBTIQ students are more likely to experience incidents of sexual assault and harassment; and
- that the response of many universities to addressing complaints of sexual assault and harassment is often inappropriate or inadequate, with students being disbelieved or blamed, their confidentiality being breached, or universities failing to act in response to their reports (chapter 2).

This report draws on both the Commission's findings and analysis, and comparative international research, in developing a framework for use by Australian universities to design and enhance policies and procedures for the response to and prevention of sexual assault and harassment.

While a review of a selection of universities internationally revealed an uneven response to the issue of sexual assault and harassment, a common thread in relation to this issue was the recognition by universities of their duty to ensure that the learning and living environment provided to their students is safe and secure. Given the significant and enduring impact of sexual assault and harassment on a student's physical and emotional wellbeing, their academic progress, and their ability to contribute to student life, it is imperative that Australian universities expeditiously investigate and resolve complaints of sexual assault and harassment in a sensitive manner, as well as provide therapeutic and academic support for victims, and develop ongoing preventative measures (chapter 3).

The report identifies six foundational principles that should inform Australian university policies and procedures on sexual assault and harassment, namely:

- **integrated and inclusive framework;**
- **comprehensive, consistent and coordinated design and content;**
- **accessible, transparent and enforceable processes;**

- **resourced, interconnected and responsive support services;**
- **collaborative links with external sexual assault services; and**
- **institutional commitment to prevention framework** (chapter 4).

In addition to these foundational principles, the report asserts that visible **university leadership, comprehensive student engagement,** and a **sustained commitment to cultural change** are critical enablers for the effective application of university sexual assault and harassment policies and procedures (chapter 5).

The final chapters of the report contain a more detailed discussion of specific areas raised by the Commission's analysis of the national student survey and online submissions – namely, institutional responses (chapter 7), student support (chapter 8) and prevention strategies (chapter 9).

The report's recommendations (chapter 10) are primarily designed to correspond with these three core issues and address concerns and deficiencies highlighted by the Commission's findings and analysis. They also reflect some of the overreaching structural initiatives that require implementation by all the relevant stakeholders (universities, governments and students).

Ultimately, the report demonstrates the need for concerted multifaceted national action to address and prevent university sexual assault and harassment. Importantly, in undertaking this critical work, Australian universities must acknowledge the essential contribution of the student voice in exposing, managing and reducing sexual violence. None of this work can occur without a sustained commitment from Australian universities to actively promote a culture that supports gender equality, social diversity and inclusivity, and contributes to a hospitable and productive learning environment.

1. Introduction

1.1 Background to the report

In September 2015, the Australian Human Rights Centre (AHRCentre) at the Faculty of Law, UNSW Sydney (UNSW) was commissioned to undertake a major research project on the extent, nature and responses to sexual assault and sexual harassment within university settings across Australia. The *Strengthening Australian University Responses to Sexual Assault and Harassment Project*¹ (the AHRCentre project) was developed at the request of the team responsible for bringing the 2015 documentary *The Hunting Ground* to Australia (The Hunting Ground Australia Project).² The documentary, which chronicles the personal stories of American university students who reported being sexually assaulted by fellow students and the failure of their universities to respond effectively and appropriately, raises important issues for exploration in the Australian context. Despite its American content, *The Hunting Ground* has served to bring these issues firmly into the public domain for comprehensive consideration by Australian universities, raising awareness among university leadership and students, in university residential colleges,³ and across student support services.

The AHRCentre project is directed at the development of effective and appropriate strategies for preventing and responding to sexual assault and harassment in Australian university settings, with a focus on the experiences of women students, Aboriginal and Torres Strait Islander students, students from culturally and linguistically diverse backgrounds (CALD) and international students, students with disability, and students who are lesbian, gay, bisexual, transgender, intersex, queer (LGBTIQ).⁴ Underlying this initiative is consideration of the factors that may enable sexual assault and harassment, and the measures and strategies that offer prospects for eroding attitudes and altering practices that may facilitate harmful conduct.

¹ Australian Human Rights Centre (AHRCentre), *Strengthening Australian University Responses to Sexual Assault and Harassment* (22 May 2017) <<http://www.ahrcentre.org/topics/strengthening-australian-university-responses-sexual-assault-and-harassment>>.

² The Hunting Ground Australia Project was established in mid-2015 around the US documentary *The Hunting Ground*. The project team has utilised the documentary 'as a tool to engage the entire Australian university sector, and the broader community, in a collaborative, comprehensive and unified campaign' focusing on sexual violence at Australian universities. See generally *The Hunting Ground Australia Project* <<http://www.thehuntinggroundaustralia.com.au/>>.

³ The term 'university residential colleges' used in this report is inclusive of all organisations or institutions that house university students.

⁴ While it is recognised that university staff may also experience and perpetrate sexual assault or sexual harassment, this project focuses on the experiences of students, both as victims and as perpetrators of sexual violence.

A key outcome of the AHRCentre project is the publication of this report, *On Safe Ground: A good practice guide for Australian universities*. The report is primarily informed by the 2016 *National University Student Survey on Sexual Assault and Sexual Harassment* (the national student survey) conducted by the Australian Human Rights Commission (the Commission), and comparative international research on university good practice in managing reports of sexual assault and harassment and preventing its occurrence. Both of these sources are discussed in section 1.3 (Report methodology) below.

The report explores five broad categories addressed by the national student survey, namely:

- (i) the prevalence of sexual assault and harassment in Australian university settings;
- (ii) student reporting experiences of sexual assault and harassment;
- (iii) institutional responses;
- (iv) the sufficiency of student support services; and
- (v) prevention strategies.

1.2 Key objectives of the report

Since its inception, the AHRCentre project has sought to work collaboratively with students, university leaders and experts to:

- recognise existing strengths in Australian university responses to sexual assault and harassment;
- identify weaknesses in university policies, procedures and practices; and
- build consensus and capacity within universities to facilitate appropriate and effective responses.

The enhancement and development of good practice institutional responses recommended in this report are informed by the experiences and views of students who have been, or are, directly impacted by sexual assault and harassment and by the institutional responses to its manifestation. As the intended beneficiaries of the AHRCentre project, their perspective has been critical to the initial design of the survey, its intended mode of implementation, and the application of the findings of the survey and online submission (see section 1.3(d)).

Despite its disquieting presence, the underlying rationale for this report is not to provide an account of the scale of sexual assault and harassment in Australian universities, but rather to identify and propose adjustments to some of the institutional responses to the issue that may unintentionally risk entrenching a culture where sexual violence is normalised, silenced or excused. This report – which considers reporting procedures and practices, response mechanisms, support services, and measures of prevention – is intended as a guide for universities to apply and adapt to their particular context in consultation with students.

Ultimately, the objective underlying the AHRCentre project is to shift a culture that erodes a productive and rewarding student experience.

1.3 Report methodology

In developing this report and its recommendations, the authors have drawn from a number of empirical studies, surveys, campaigns, reports of government taskforces, individual university codes of practice and policies, and academic writings. In addition, the AHRCentre Project Working Party – which brought together representatives from the Australian Human Rights Commission; the NSW Rape Crisis Centre; the Gendered Violence Research Network at UNSW; the UNSW health service, counselling service, security service, and legal and internal disciplinary offices; and elected student representatives – met throughout the term of the project and provided resources, advice and guidance to the project team.

The following key resources have informed the development of this report.

(a) National Union of Students Talk About It Surveys (2011 and 2015)

For over 20 years, the National Union of Students (NUS) and women's officers at individual universities have been drawing attention to the issue of campus sexual assault and harassment. In more recent years, the NUS has collected data on student experiences of sexual assault, sexual harassment and other forms of violence, in particular through the *Talk About It* surveys, conducted in 2011 and 2015.⁵ These surveys point to dissatisfaction with university responses to sexual violence: of the 1,366 women students who responded to the 2015 *Talk About It* survey, 73% said they had experienced sexual harassment while enrolled at their current institution, and 27% had experienced sexual assault.⁶ The survey indicated that these incidents occurred both on and off campus, with 51% of responses relating to sexual harassment indicating that the perpetrator was a student at the same university.⁷

(b) Review into the Treatment of Women in the Australian Defence Force Academy (2011)

In 2011, the Australian Defence Force Academy (ADFA), an academic facility operated jointly by UNSW Canberra and the Department of Defence, was the subject of a review by the Australian Human Rights Commission. The Commission investigated measures to promote gender equality, to address and prevent sexual harassment and abuse, and to drive cultural change in the treatment of women at ADFA. The review highlighted a number of institutional features that both discouraged the reporting of sexual assault and harassment (due to fear of stigmatisation, retaliation, or prejudicing career progression) and undermined the nature of the allegations.⁸ The review also found that the existence of a 'drinking culture' was clearly associated with 'unacceptable behaviour, including

⁵ NUS, *Talk About It: NUS Women's Department 2015 Survey Report* (2015) <https://d3n8a8pro7vhmx.cloudfront.net/nus/pages/144/attachments/original/1454369041/Talk_about_it_Survey_Report.pdf?1454369041>; NUS, *Talk About It Survey, Results and Recommendations* (2011) <<https://d3n8a8pro7vhmx.cloudfront.net/nus/pages/33/attachments/original/1435818157/talk-about-it-survey-results-and-recommendations.pdf?1435818157>>.

⁶ NUS (2015), above n 5, 15, 20. The survey focused on the experiences of women students.

⁷ The most common location for sexual harassment was in public spaces, both on campus (62%) and off campus (68%). The most common locations for sexual assault were at somebody's house (64%), at a public space off campus (27%), in university accommodation (24%), and at a student event on campus (12%). The perpetrators included another student at the university (51% for sexual harassment; 22% for sexual assault) or a member of staff (5% for sexual harassment; 2% for sexual assault). Ibid 15–17, 20–21.

⁸ Australian Human Rights Commission, *Report on the Review into the Treatment of Women at the Australian Defence Force Academy – Phase 1 of the Review into the Treatment of Women in the Australian Defence Force* (2011), 72–83 <http://defencereview.humanrights.gov.au/sites/default/files/ADFA_2011.pdf>.

sexual misconduct'.⁹ The review concluded that these features were not necessarily unique to ADFA and stated that 'ADFA is not alone in facing these challenges [of sexual assault and harassment]';¹⁰ rather, 'sexual harassment and assault is a problem across Australian universities'.¹¹

(c) National Student Survey on Sexual Harassment and Sexual Assault (2016)

Despite media reports and anecdotal evidence, there has not, until recently, been any collation of comprehensive, independent statistical information about the incidence and management of sexual assault and harassment at Australian universities. In order to evaluate and enhance institutional policies, procedures and practices relating to the reporting and resolution of complaints of sexual assault and harassment, the AHRCentre and The Hunting Ground Australia Project (see below) determined that it was essential to obtain data from students across Australian universities to identify the nature and extent of sexual assault and harassment within Australian universities (prevalence), the reporting experience of students, the impact of institutional responses, and the sufficiency of relevant student support services. Initial discussions with students also indicated that women students, Aboriginal and Torres Strait Islander students, CALD and international students, students with disability, and LGBTIQ students had particular needs and that these cohorts of students should be a specific focus of the survey.

Subsequently, the AHRCentre partnered with the Australian Human Rights Commission to develop the initial design of the first comprehensive national student survey on sexual assault and sexual harassment. The national survey was supported by seed funding from The Hunting Ground Australia Project and primary funding from the university sector peak body, Universities Australia. The survey built on the NUS *Talk About It* surveys (2011 and 2015) and drew from the ADFA *Unacceptable Behaviour* Survey (2011), the Australian Human Rights Commission Sexual Harassment national telephone survey (2012), the Association of American Universities Campus *Climate Survey on Sexual Assault and Sexual Misconduct* (2014),¹² and the Sydney University *Creating a Safer Community for All* pilot survey (2015). The online survey was conducted by Roy Morgan Research and distributed to a stratified sample of 319,252 students across all 39 Australian universities between September and December 2016 on an anonymous, confidential and voluntary basis. The results of the national survey were released by the Commission on 1 August 2017.

(d) Australian Human Rights Commission Online Submissions

In addition to the survey, the Commission established a submission process inviting students, past and present, and organisations to make online submissions about their experiences and university management of complaints of sexual assault and harassment.¹³ The submission process, which was

⁹ Ibid 45.

¹⁰ Ibid xxv.

¹¹ Ibid 34.

¹² David Cantor et al, *Report on the AAU Climate Survey on Sexual Assault and Sexual Misconduct* (21 September 2015) Association of American Universities <https://www.aau.edu/sites/default/files/%40%20Files/Climate%20Survey/AAU_Campus_Climate_Survey_12_14_15.pdf>.

¹³ Over 1,800 written submissions were received over a five-month period, with Commission President Gillian Triggs calling the numbers "unprecedented" and the accounts "deeply disturbing". See "'Deeply Disturbing' Responses to Uni Sexual Harassment Survey, Human Rights Commission says", *Triple J Hack*, 31 August 2016 <<http://www.abc.net.au/triplej/programs/hack/sexual->

open from August 2016 until December 2016,¹⁴ secured 1,849 submissions.¹⁵

The Commission's report, *Change the Course: National Report on Sexual Assault and Sexual Harassment at Australian Universities* (Commission's report), provides both an analysis of the national student survey data results and the online submissions that inform this report.

(e) The Hunting Ground Australia Project Progress Reports

The Hunting Ground Australia Project has facilitated university and community screenings since February 2016 of the US documentary *The Hunting Ground*, in order to engage the Australian university sector and the broader community in a discussion around the incidence of, and responses to, sexual violence at Australian universities. In addition, The Hunting Ground Australia Project has engaged the Full Stop Foundation and Rape & Domestic Violence Services Australia to develop the *Sex, Safety & Respect* program and training materials for use by universities, student organisations and university residential colleges. The Hunting Ground Australia Project has published two *Progress Reports*¹⁶ that have profiled a number of case studies from Australian universities and residential colleges highlighting initiatives they have undertaken to address sexual assault and harassment on their respective campuses.

(f) Local Perspectives: A UNSW Case Study

An additional component of the AHRCentre project was the conduct of a small-scale case study, *Local Perspectives: A case study on responses to sexual violence in a university setting* (UNSW Case Study) to provide an in-depth study of the issues confronting an individual university.¹⁷ The case study involved interviews with staff and students across the university, including representatives from UNSW security, health service, counselling service, legal office, conduct and integrity unit, college residences, student representative council, legal practitioners and academics who conduct research into gendered violence.

(g) International perspectives: comparative research

This report also draws on comparative international research with particular reference to legal and policy frameworks and university experiences in relation to the management and prevention of sexual assault and harassment in the United States (US), the United Kingdom (UK), Canada, India and South Africa (with additional references to other countries where instructive). The countries selected share similar features in relation to their educational and legal systems. The individual

assault-on-campus/7802588>.

¹⁴ For further information about the online submissions, see Australian Human Rights Commission, *Submissions on Sexual Assault and Sexual Harassment at University* <<https://www.humanrights.gov.au/submissions-sexual-assault-and-sexual-harassment-university>>.

¹⁵ Australian Human Rights Commission, *Change the Course: National Report on Sexual Assault and Sexual Harassment at Australian Universities* (Commission's Report) (1 August 2017), 6 <<https://www.humanrights.gov.au/our-work/sex-discrimination/projects/university-sexual-assault-and-sexual-harassment-project>>.

¹⁶ The Hunting Ground Australia Project, *Progress Reports*, July 2016 and July 2017 <<http://www.thehuntinggroundaustralia.com.au/resources/>>.

¹⁷ Elena Cama and Andrea Durbach, *Local Perspectives: A case study on responses to sexual violence in a university setting, (August 2017) Australian Human Rights Centre, UNSW Sydney* <<http://www.ahrcentre.org/topics/strengtheningaustralian-university-responses-sexual-assault-and-harassment>>.

universities selected reflect a range of factors, including their size and location (urban and regional), as well as those that have been proactive in addressing campus sexual violence.

A major consideration underlying the selection of this comparative research has been the utility of international initiatives to the Australian context and the extent to which they offer the potential for useful adaptation and enhancement of existing policies and procedures. Although lessons about responding to campus sexual assault and harassment in other countries cannot simply be replicated in Australia, given legal and cultural variations, many of the international examples offer important insights into what is now undeniably a global problem with significant physical, emotional and intellectual consequences for student populations.

1.4 Definitions of key terms used in this report

The research informing this report has uncovered different usage of terminology and a broad range of conduct that may fall within university sexual assault and harassment. Terms used include 'gender-based violence', 'gender-based misconduct', 'gendered violence', 'sexual violence', 'sexual misconduct', 'sexual harassment' and 'sexual assault'. In framing this report, the definitions used in the Commission's report are adopted.¹⁸

The term **sexual assault** is used to cover a range of unacceptable physical behaviours, which are criminal offences. The Commission's report refers to both the legal definition of 'sexual assault' and also the community understanding of the term, with the terms 'rape', 'sexual assault' and 'sexual abuse' being used interchangeably. The Commission's report cites the NSW Department of Justice's definitions of the terms commonly used to describe sexual assault in the community:

- **Rape** is a term used in the community which describes the forced penetration of the vagina or anus of any person with any part of the body of another person, or any object, against their will or consent. It also includes oral sex.
- **Indecent assault** is unwanted touching of a person's body by another person. For example, it can include kissing or inappropriate touching of a person's breasts, bottom or genitals.¹⁹

The legal definitions and terminology used to cover acts analogous to sexual assault and indecent assault vary between each state jurisdiction.

This report uses the same meaning of the term 'sexual assault' as used in the Commission's report, namely:

Sexual assault includes a range of behaviours, all of which are unacceptable and constitute a crime, whereby a person is forced, coerced or tricked into sexual acts against their will or without their consent, including when they have withdrawn their consent.²⁰

Unlawful sexual harassment is defined under the Sex Discrimination Act 1984 (Cth) as 'an

¹⁸ Commission's report, above n 15, chapter 1.2.

¹⁹ Ibid chapter 1.2(b).

²⁰ Commission's report, above n 15, endnote 57.

unwelcome sexual advance', 'an unwelcome request for sexual favours' or 'other unwelcome conduct of a sexual nature' that must have occurred in 'circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated'.²¹ The term is used to describe various unacceptable behaviours, including both physical and non-physical acts, such as those communicated orally, in writing, or via social media.²² As part of the national student survey, students were provided with examples of acts or behaviours that may constitute sexual harassment under the Sex Discrimination Act, including:

- unwelcome touching, hugging, cornering or kissing;
- inappropriate staring or leering that made you feel intimidated;
- sexual gestures, indecent exposure or inappropriate display of the body;
- sexually suggestive comments or jokes that made you feel offended;
- sexually explicit pictures, posters or gifts that made you feel offended;
- repeated or inappropriate invitations to go out on dates;
- intrusive questions about your private life or physical appearance that made you feel offended;
- inappropriate physical contact;
- requests or pressure for sex, or other sexual acts; and
- any other unwelcome conduct of a sexual nature.²³

For the purposes of this report, the term 'sexual harassment' is used to cover the above behaviour. It is noted that some acts of sexual harassment may also constitute sexual assault.

While the terms **victim**, **survivor** and **victim-survivor** are used interchangeably to refer to people who have experienced sexual violence, they carry different connotations. The term 'victim' generally refers to someone who has recently been affected by sexual violence and also reflects many aspects of the legal and policy frameworks considered in this report that seek to regulate sexual assault and harassment. The term 'survivor' of sexual violence generally refers to someone who has gone through the recovery process following an experience of sexual assault or harassment.

This report uses the term 'victim' to refer to students who have recently experienced sexual violence, as is reflected in the national student survey. The use of the term 'victim' in this report does not intend to negate the agency of those who have experienced sexual assault or harassment.

1.5 Application of report

While the content and coverage of this report is not exhaustive, its recommendations are directed

²¹ *Sex Discrimination Act 1984* (Cth) s 28A(1).

²² For a list of potential acts of sexual harassment, see generally Australian Human Rights Commission, *Effectively Preventing and Responding to Sexual Harassment: A Quick Guide* (2008), 3 <https://www.humanrights.gov.au/sites/default/files/content/sexualharassment/quickguide/QuickGuide_2008_web.pdf>.

²³ Commission's report, above n 15, endnote 56.

at enhancing Australian universities' policies, procedures and practices in addressing and preventing sexual assault and harassment. Each university's response to these recommendations will inevitably be shaped by factors relevant to that institution, such as size, student demographic and geographical location.

This report does not include a review of policies and procedures at individual Australian universities in relation to the management and prevention of sexual assault and harassment (other than those referred to in the case study *Local Perspectives*, referred to in section 1.3(f) above). Rather, it draws on a number of national and international sources and student experiences in relation to the application of university policies on sexual assault and harassment. More specifically, this report offers a guide to good practice in relation to the key factors highlighted by the national student survey.

Given that this area of research and practice is growing exponentially both in Australia and internationally, the ongoing utility of this report will benefit from comments and suggestions, particularly from students. These can be sent to the AHRCentre in the Faculty of Law, UNSW Sydney via email: ahrc@unsw.edu.au.

2. Sexual assault and harassment at Australian universities

2.1 Identifying the problem of sexual violence at Australian universities

There is widespread denial in our society about the extent of sexual assault. I think that what's happening in universities is a reflection of broader society.²⁴

... universities are complex environments. About three in five Australian university students are under 24, many are away from home for the first time, and there's a vibrant social life on campus. We know too that 18- to 24-year-olds are the group most likely to drink harmful levels of alcohol on a single occasion. All these factors compound the issue of sexual harassment and sexual assault, but none excuse it.²⁵

Violence against women has been recognised by the World Health Organization (WHO) as a 'public health problem of epidemic proportions, requiring urgent action'.²⁶ According to figures from UN Women, one in three women suffer physical or sexual violence during their lifetime.²⁷ In Australia, research by the Australian Bureau of Statistics (ABS) indicates that almost one in five women over the age of 15 years experiences sexual violence within their lifetime.²⁸ Further, ABS data indicates that in 2015, reports of sexual assault had reached a six-year high, representing a 3% increase from the previous year.²⁹ The ABS report, which covers incidents of sexual assault that are reported to the police, notes that the majority of sexual assault victims (four out of five) were female, and females aged between 15 and 19 years old were seven times more likely to be a victim of sexual assault

²⁴ Catherine Lumby, quoted in Linda Hoang, 'Are Universities Adequately Addressing Sexual Assault? Backchat Discusses' *FBI Radio*, 17 March 2017 <<http://fbiradio.com/are-universities-adequately-addressing-sexual-assault-backchat-discusses/>>.

²⁵ Ian Jacobs (Speech delivered at the launch of the national student survey on sexual assault and sexual harassment, UNSW Sydney, 23 August 2016), quoted in Tony Maniaty, "Today We Say with One Voice: One Incident Is One Too Many", *UNSW Sydney Newsroom*, 23 August 2016 <<http://newsroom.unsw.edu.au/news/general/today-we-say-one-voice-one-incident-one-too-many>>.

²⁶ WHO Department of Reproductive Health and Research, London School of Hygiene and Tropical Medicine, and South African Medical Research Council, *Global and Regional Estimates of Violence Against Women: Prevalence and Health Effects of Intimate Partner Violence and Non-Partner Violence, Executive Summary* (2013), 2 <http://apps.who.int/iris/bitstream/10665/85241/1/WHO_RHR_HRP_13.06_eng.pdf?ua=1>.

²⁷ UN Women, *Facts and Figures: Ending Violence Against Women* (February 2016) <<http://www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figures>>.

²⁸ Peta Cox, *Violence Against Women: Additional Analysis of the Australian Bureau of Statistics' Personal Safety Survey, 2012* (2016) Australia's National Research Organisation for Women's Safety, 50 <http://media.aomx.com/anrows.org.au/PSS_2016update.pdf>.

²⁹ ABS, *Recorded Crime – Victims, Australia, 2015*, cat no 4510.0 (13 July 2017) <<http://www.abs.gov.au/ausstats/abs@.nsf/mf/4510.0>>.

compared to the overall population.³⁰ The percentage of sexual assault victims who knew their perpetrator varied from 71% to 80% between states, and the majority of incidents of sexual assault occurred in a residential location.³¹

While global and national statistics give an indication of the prevalence of sexual assault and harassment within the broader community, it is only in recent times that data regarding the extent of the problem within the context of universities has emerged.³² A number of factors contribute to the reasons for deficient data and analysis of university sexual violence:

- the lack of comprehensive statistical evidence;
- low levels of reporting of cases of sexual assault and harassment;³³
- the internal management of the issue by university authorities (including the use of non-disclosure agreements in cases where an agreement is reached between the parties that prevents disclosure by the victim);³⁴ and
- university responses that are largely defensive³⁵ or repudiate the 'undeniable reality'³⁶ of sexual assault and harassment on university campuses.

³⁰ Ibid.

³¹ Ibid.

³² In the **US**, the *AAU Climate Survey on Sexual Assault and Sexual Misconduct*, involving 27 universities, found that 11.7% of student respondents experienced non-consensual sexual contact by physical force, threat of physical force or incapacitation since enrolment. The incident rate among female undergraduate students was 23.1%: David Cantor et al, above n 12. In the **UK**, the 2010 National Union of Students' *Hidden Marks Survey* of 2010 female students found that 68% of respondents had been verbally or physically harassed on campus and 14% had experienced serious physical or sexual assault: Universities UK, *Changing the Culture: Report of the Universities UK Taskforce Examining Violence Against Women, Harassment and Hate Crimes Affecting Students* (2016), 18–19 <<http://www.universitiesuk.ac.uk/policy-and-analysis/reports/Documents/2016/changing-the-culture.pdf>>. In **Sri Lanka**, a 2009 study of 1,322 undergraduates found that 44% of respondents experienced sexual abuse: United Nations Population Fund, *Protecting Women's Rights*, 6 <<http://srilanka.unfpa.org/sites/default/files/pub-pdf/WomensRights.pdf>>. Studies in **Canada** estimate that between 15% and 25% of women of college and university age will experience sexual assault during their studies: Lauren F Lichty, Rebecca Campbell and Jayne Schuiteman, 'Developing a University-Wide Institutional Response to Sexual Assault and Relationship Violence' (2008) 36(1–2) *Journal of Prevention & Intervention in the Community* 6. The first research conducted on violence against women at **Spanish** universities in 2017 reveals that 62% of the student population know or have experienced situations of gender violence in the university community. The study also suggests that such violence often goes unreported and that there is a lack of knowledge to identify these situations: Rosa Valls et al, 'Breaking the Silence at Spanish Universities: Findings from the First Study of Violence Against Women on Campuses in Spain' (2016) 22(13) *Violence Against Women* 1519.

³³ Only a minimal number of reports are made, as victims think that they will not be believed or that the university response will be hostile or inappropriate. Cantalupo notes that 'the vast majority of the reasons survivors give for not reporting demonstrates their lack of faith in existing responses and their attempt to avoid the negative consequences that they believe will come of reporting': Nancy Cantalupo, 'How Should Colleges and Universities Respond to Peer Sexual Violence on Campus? What the Current Legal Environment Tells Us' (2010) 3(1) *NASPA Journal About Women Higher Education* 49, 52–53. The reasons for non-reporting among US students identified by Cantalupo are consistent with the findings of the Commission's report: see Commission's report, above n 15, chapter 6.

³⁴ The issue of non-disclosure agreements was highlighted by Professor Sara Ahmed, who resigned from Goldsmiths University of London in protest against the university's failure to address the issue of sexual harassment. See Sally Weale and David Batty, 'Sexual Harassment of Students by University Staff Hidden by Non-Disclosure Agreements', *The Guardian*, 26 August 2016 <<https://www.theguardian.com/education/2016/aug/26/sexual-harassment-of-students-by-university-staff-hidden-by-non-disclosure-agreements>>.

³⁵ In a survey conducted by the Indian University Grants Commission, India's higher education regulatory body, that reviewed responses to the issue of sexual harassment at universities and colleges, the Commission found that 'it was obvious from the way in which most questionnaires were answered that authorities were either defensive or in denial over issues pertaining to gender discrimination and sexual harassment on their campuses': University Grants Commission, *SAKSHAM: Measures for Ensuring the Safety of Women and Programs for Gender Sensitization on Campuses* (December 2013), 2 <http://www.ugc.ac.in/pdfnews/5873997_SAKSHAM-BOOK.pdf>.

³⁶ Jacobs, quoted in Maniaty, above n 25.

Within Australia, data identifying the extent of the sexual assault and harassment at universities has emerged from various sources.

NUS 'Talk About It' Surveys (2011 and 2015)

As mentioned above (section 1.3), the Australian NUS and women's officers at individual universities have been working to highlight and address the issue of campus sexual assault and harassment for over two decades. In more recent years, the NUS has collected data on student experiences of sexual assault, sexual harassment, and other forms of violence through the *Talk About It* surveys, conducted in 2011 and 2015.

Of the 1,549 women students who responded to the 2011 survey, 86% said they had experienced some form of sexual harassment, while 67% had experienced unwanted sexual encounters, and 17% had experienced sexual assault.³⁷

Of the 1,366 women students who responded to the second NUS survey in 2015, less than 6% of those who had experienced sexual assault or sexual harassment reported the incident to the university.³⁸ Of the students who did report an incident to the university or the police, 72% were dissatisfied with the outcome.³⁹

ADFA Review (2011)

The issue of sexual violence in Australian universities was also highlighted by the Australian Human Rights Commission's *Review into the Treatment of Women in the Australian Defence Force Academy*, which found that ADFA was not unique in facing the challenges of sexual assault and sexual harassment; rather, the issue was a problem across Australian universities.⁴⁰ The review recommended that ADFA develop an annual survey to gauge levels of sexual assault and harassment in collaboration with the residential colleges and halls of the Group of Eight (GO8) universities.⁴¹ This recommendation failed to gain momentum at the time,⁴² but resurfaced with the screening of *The Hunting Ground* documentary in Australia and the development of the AHRCentre project.⁴³

³⁷ NUS (2011), above n 5.

³⁸ NUS (2015), above n 5.

³⁹ *Ibid* 23.

⁴⁰ Australian Human Rights Commission, above n 8, 34.

⁴¹ *Ibid* xxv.

⁴² Kate Stanton, 'Survey of Sex Assaults on University Campuses Shelved', *Sydney Morning Herald*, 16 November 2014 <<http://www.smh.com.au/national/survey-of-sex-assaults-on-university-campuses-shelved-20141114-11na07.html>>.

⁴³ *The Hunting Ground* was made in response to audience reactions to the filmmakers' previous film, *The Invisible War*, which focused on sexual assault within the American military. During nationwide screenings of *The Invisible War* at American campuses, parallels were drawn between what was happening in the military and on university campuses. Similarly, in the Australian context, the ADFA recommendation points to analogous institutional patterns in relation to misconduct and response and the 'dissonance between the stated values [of the two institutions], and practice on the ground': Damian Powell, 'The Australian Defence Force Academy "Skype Sex Scandal": Lessons on Leadership and Ethics' (Talk presented at University Colleges Australia, Adelaide, 2 November 2014), 9 <https://universitycollegesaustralia.edu.au/wp-content/uploads/2014/07/Powell_ADFA_paper.pdf>.

Australian Human Rights Commission's National Report on Sexual Assault and Sexual Harassment at Australian Universities (2017)

Global screenings of *The Hunting Ground* have sparked increased media and community attention regarding the prevalence of sexual assault and harassment at universities and the lack of adequate institutional responses to such incidents. In Australia, The Hunting Ground Australia Project has prompted increased dialogue within the whole university sector, including the launch by Universities Australia of the *Respect. Now. Always.* campaign in February 2016,⁴⁴ and the implementation of the national student survey across all 39 Australian universities in September 2016.

An analysis of the Commission's report on the findings of the national student survey and online submissions highlights three significant features:

- i. The report reinforces similar findings over many years by the NUS that there are concerning levels of sexual assault and harassment within Australian university settings. The survey findings reveal that 26% of students had been sexually harassed within a university setting during the 2016 calendar year,⁴⁵ with women being twice as likely as men to be sexually harassed.⁴⁶ In relation to sexual assault, the survey found that 'overall, 6.9% of students had been sexually assaulted on at least one occasion in 2015 or 2016 with 1.6% reporting that the sexual assault occurred in a university setting'. In relation to these statistics, women (10%) were three times more likely to experience sexual assault compared to men (2.9%).⁴⁷
- ii. Although universal data indicate that the victims of sexual violence are primarily women, the Commission's report shows that incidents of sexual assault and harassment occur across and within other specific student cohorts or groups. The report found that Aboriginal and Torres Strait Islander students, CALD students and international students, students with disability, and LGBTIQ students were the most likely to experience incidents of sexual assault and harassment.⁴⁸
- iii. The response of many universities to addressing complaints of sexual assault and harassment is often inappropriate or inadequate, with students being disbelieved or blamed,

⁴⁴ The Universities Australia *Respect. Now. Always.* campaign was developed to raise awareness of sexual assault and sexual harassment and increase visibility of support services for students, obtain data to guide further improvement in university policies and services, and assist universities in sharing global best practice resources across the sector. See Universities Australia, *Respect. Now. Always.* (10 May 2017) <<https://www.universitiesaustralia.edu.au/uni-participation-quality/students/Student-safety>>.

⁴⁵ Commission's report, above n 15, chapter 2.1.

⁴⁶ Ibid.

⁴⁷ Commission's report, above n 15, chapter 2.3.

⁴⁸ The survey found that those who identified as Aboriginal or Torres Strait Islander were more likely than non-Aboriginal and Torres Strait Islander students to experience sexual assault and sexual harassment, and to have experienced this in a university setting (Ibid chapter 2.4(d)). The survey also found that one in five (22%) international students had been sexually harassed at university in 2016 (Ibid chapter 2.4(c)). Although this figure for international students is slightly lower than that for domestic students (one in four), it is still a significant finding. Further, 5.1% of international students were sexually assaulted in 2015 or 2016, with 1.4% experiencing this within a university setting (Ibid chapter 2.4(c)). Students with disability were also found to be more likely to have been sexually harassed or sexually assaulted than those without disability (Ibid chapter 2.4(e)). Additionally, the survey found that trans and gender diverse students were more likely to be sexually assaulted or harassed than women or men (Ibid chapter 2.2(a)). Bisexual, gay or lesbian students were also more likely than heterosexual students to experience sexual assault or harassment, with bisexual students being most likely to have been sexually assaulted in 2015–2016 (Ibid chapter 2.4(b)). See also Robert W S Coulter and Susan R Rankin, 'College Sexual Assault and Campus Climate for Sexual- and Gender-Minority Undergraduate Students' (2017) *Journal of Interpersonal Violence*, DOI: 10.1177/0886260517696870.

their confidentiality being breached, or universities failing to act in response to their reports.⁴⁹ These responses risk exacerbating the trauma endured by victims of sexual assault and harassment and undermining or limiting institutional attempts to deter such conduct by holding perpetrators to account.⁵⁰ In a submission to the Commission, a student wrote that “reporting my rape to the university was worse than being raped”.⁵¹ Allied to this concern is the existence of ‘violence supportive attitudes’⁵² and underlying beliefs that contribute towards sexual assault and harassment, including the normalisation of sexual violence, and the impact of such attitudes and beliefs on institutional responses to sexual assault and harassment.⁵³

2.2 Responding to sexual violence: the task of universities

*[P]ersistent and pervasive sexual violence exists just as much outside of the academy as within it. Given this reality, if we are to reduce sexual violence in our campus communities, we must also pay attention to the issue outside of our walls and to the education and indoctrination our students, faculty, and staff receive before arriving at our doors. In addition, we need to continue to work with community and governmental organizations addressing rape and other forms of sexual violence in different communities.*⁵⁴

The appropriate response and effective management by universities to incidents of student sexual assault and harassment raises a number of considerations regarding the extent to which universities should assume the role of educator or regulator, or act *in loco parentis* in addressing sexual assault and harassment. While the appropriate degree of intervention may be contested, leadership by Australian universities in tackling this issue is critical for four important reasons: ensuring the wellbeing of the student population; aligning stated institutional values and institutional practice; recognising the scope or reach of university responsibility in responding to the issue; and participating in the resolution of a ‘serious social issue of national concern’, which exists ‘just as much outside of the academy as within it’.⁵⁵

⁴⁹ Commission’s report, above n 15, chapter 6.2(d)(ii), (iv), (x), (xii).

⁵⁰ The Commission received numerous submissions about experiences regarding reporting and the seeking of support following incidents of sexual assault or harassment. The majority of these submissions detailed negative experiences of reporting or support seeking at a university, or negative impacts following an experience with a university, including a ‘fear of being victimised’ or feeling that the experience of reporting would be ‘emotionally difficult.’ (Ibid chapter 6.2 (d)(vii) and (vi)). In addition, a number of submissions spoke to the lack of adequate support services for victims of sexual assault or harassment at universities and the lack of specialised services for CALD students and students with disabilities (Ibid chapter 6.3(f). Where submissions indicated positive reporting experiences, students felt they had been believed and had access to professional support services. (Ibid chapter 6.3 (f) (i)).

⁵¹ Ibid chapter 6.3(f).

⁵² Ibid chapter 8.2.

⁵³ See Ibid chapter 7 which covers various attitudes that contribute to sexual assault and harassment at university, including victim blaming, the sexualisation of women, entitlement to sex, and the normalisation of sexual assault and sexual harassment.

⁵⁴ Rebecca Ropers-Huilman, Kaaren M Williamsen and Garrett Drew Hoffman, ‘Afterword: Questioning the Scripts of Sexual Misconduct’ in Sara Carrigan Wooten and Roland W Mitchell (eds), *The Crisis of Campus Sexual Violence: Critical Perspectives on Prevention and Response* (Routledge, 2016) 190.

⁵⁵ Ian Jacobs, ‘Australian Universities Have Zero Tolerance for Sex Assaults on Campus’, *Sydney Morning Herald*, 15 May 2016 <<http://www.smh.com.au/comment/australian-universities-have-zero-tolerance-for-sex-assaults-on-campus-20160513-goulv3.html>>.

2.1.1 Ensuring the wellbeing of the student population

Establishing a culture of learning that is respectful of others, maintaining an environment of freedom and safety, and demonstrating institutional leadership that is supportive and appropriate to the needs of victims and intolerant of offensive conduct, can have a direct impact not only on a student's academic experience but also on their physical and mental health, and social life. Sixty-seven percent of respondents of the 2011 NUS *Talk About It* survey who experienced sexual harassment, assault or stalking said that the incident had affected their mental health.⁵⁶ The provision of effective remedies and preventative measures to address this harm is key to many of the recommendations contained in this report.

The consequences of sexual assault and harassment on victims can include physical and emotional injury. At the launch of the national student survey in 2016, the then Chair of Universities Australia and Vice-Chancellor of Western Sydney University, Professor Barney Glover, spoke of the "damage caused by sexual harassment and sexual assault [that] cannot be undone".⁵⁷ This harm – which may include associated concerns such as pregnancy and sexually transmitted diseases, mental health issues including depression and anxiety, and social and financial impacts on victims over both short and prolonged periods of time – are well documented,⁵⁸ as are the 'ripple effects' of sexual assault within the wider community.⁵⁹

Within the university and student context, sexual assault can have a significant impact on a student's academic achievement and their ability to contribute to student life on campus.⁶⁰ A Yale student victim who appears in *The Hunting Ground*, Alexandra Brodsky, speaks of this harm: "Sexual violence holds back individuals from flourishing. That feels very real to students. It's not abstract when you're failing out of school because you have to share a library with your rapist."⁶¹ Students who have been sexually assaulted may find it difficult to carry a normal course load, attend class, or complete assignments, examinations and theses. As recognised by the American Association of University Professors, 'these changes stem sometimes from social withdrawal, sometimes from a desire to avoid the perpetrator. Assaulted students regularly drop courses altogether, leave school, or transfer'.⁶²

⁵⁶ NUS (2011), above n 5.

⁵⁷ Maniaty, above n 25.

⁵⁸ See eg Cameron Boyd, 'The Impacts of Sexual Assault on Women' (2011) *Australian Centre for the Study of Sexual Assault*, Resource Sheet 2 <<https://aifs.gov.au/publications/impacts-sexual-assault-women>>; Centers for Disease Control and Prevention, *Intimate Partner Violence: Consequences* (3 March 2015) <<http://www.cdc.gov/violenceprevention/intimatepartnerviolence/consequences.html>>; WHO, *Responding to Intimate Partner Violence and Sexual Violence against Women; WHO Clinical and Policy Guidelines* (2013) <<http://www.who.int/reproductivehealth/publications/violence/9789241548595/en/>>.

⁵⁹ See Zoe Morrison, Antonia Quadara and Cameron Boyd, "'Ripple Effects' of Sexual Assault" (2007) *Australian Centre for the Study of Sexual Assault*, Issues 7 <<https://aifs.gov.au/publications/ripple-effects-sexual-assault/>>. Research also suggests that sexual violence is a public health issue, with associated financial costs including those relating to medical and mental health care treatments. See Centers for Disease Control and Prevention, above n 58; Catherine L Wisner et al, 'Intimate Partner Violence Against Women: Do Victims Cost Health Plans More?' (1999) *Journal of Family Practice* 439. See further Susan Rees et al, 'Lifetime Prevalence of Gender-Based Violence in Women and the Relationship with Mental Disorders and Psychosocial Function' (2011) 306(5) *JAMA: Journal of the American Medical Association* 513.

⁶⁰ In relation to the consequences of sexual assault on students specifically, see generally American Association of University Professors, Committee on Women in the Academic Profession, *Campus Sexual Assault: Suggested Policies and Procedures* (November 2012) <https://www.aaup.org/file/Sexual_Assault_Policies.pdf>.

⁶¹ Emily Bazelon, 'The Return of the Sex Wars', *The New York Times*, 10 September 2015 <<https://www.nytimes.com/2015/09/13/magazine/the-return-of-the-sex-wars.html>>.

⁶² American Association of University Professors, above n 60, 367.

Recognising the nature and impact of this harm, and as part of their commitment to supporting student victims of sexual assault, Durham University's (UK) Sexual Violence Taskforce has recommended that exam boards be provided with advice 'on the impact of sexual violence and trauma, and the capacity to engage in academic work'.⁶³

2.1.2 Aligning stated institutional values and practice

Incidents of sexual assault and harassment (both alleged and determined) may also have a detrimental impact on universities, particularly where universities fail to effectively address and prevent conduct that conflicts with the stated core values institutions seek to uphold. This 'dissonance between the stated values, and practice on the ground'⁶⁴ can potentially undermine any commitment made by university leadership to address the issue of sexual violence and create distrust towards the university administration by students, their parents and alumni.

Universities likewise face reputational damage if incidents of sexual assault and harassment on campus are reported in the media and universities are perceived to be failing to address the issue. A study published in 2016 by Harvard Business School shows the correlation between the publication of such media reports and the decline in student applications.⁶⁵ This reputational damage can potentially extend to withdrawal of sponsorships, philanthropic donations and government funding and public concerns about university management of harmful student conduct. In June 2017, following media exposure of 'unacceptable' attitudes and practices at a University of Sydney residential college, the NSW Education Minister announced a review of legislation that placed some university colleges (and the conduct of their students) outside the control of their associated university and the government.⁶⁶

Additionally, universities that fail to implement fair and transparent procedures to combat sexual violence face the risk of litigation on various grounds. Nipissing University in Canada was found to have breached its procedural obligations under the Ontario Human Rights Code after failing to institute proactive policies in breach of a provincial human rights code that prohibits sexual harassment. The Human Rights Tribunal of Ontario found that although the university had a harassment policy, the policy and related procedures were 'inadequate' to deal with the reported incident and awarded damages to the applicant. Further, the university's failure to communicate with the victim was found to constitute a failure to be 'diligent in pursuing the complaint'.⁶⁷ In the US, Columbia University faced litigation for failing to adhere to principles of due process during a disciplinary hearing on the basis of sex discrimination.⁶⁸ In the Australian context, the issue of procedural fairness in a disciplinary hearing was raised in a case where a student successfully

⁶³ Durham University's Sexual Violence Taskforce, *A Higher Education Initiative to Address Sexual Violence and Misconduct on Campus*, 10 <<https://www.dur.ac.uk/resources/svtf/SVTFbrochurePROOF.pdf>>.

⁶⁴ Powell, above n 43, 9.

⁶⁵ Michael Luca, Patrick Rooney and Jonathan Smith, 'The Impact of Campus Scandals on College Applications' (2016) Harvard Business School Working Paper, No 16-137.

⁶⁶ Pallavi Singhal, 'Rob Stokes Considers Overhaul of University College Halls as St Paul's Attempts to Join Review', *Sydney Morning Herald*, 2 June 2017 <<http://www.smh.com.au/national/education/rob-stokes-considers-overhaul-of-university-college-laws-as-st-pauls-attempts-to-join-review-20170601-gwibrd.html>>.

⁶⁷ See the Canadian case *Ford v Nipissing University* [2011] HRTO 204, 63–65, 68, 70–73.

⁶⁸ See *John Doe v Columbia University*, No 15-1536 (2d Cir, 2016).

claimed that the university had failed to afford him due process before suspending him for an alleged incident of non-consensual sexual conduct.⁶⁹

2.1.3 Recognising the reach of university responsibility

*[S]tudents of colleges/halls/residences are first and foremost a student of the university, and should feel they have every available avenue to follow in the case that they are the victim of an incident [of sexual assault or harassment].*⁷⁰

Sexual assault and harassment against students occurs within a diverse range of university settings, including in libraries or lecture theatres, residential colleges, and sporting facilities. Although the Commission's report identified that in 2015 and 2016 the most common locations of student sexual assault were at a university or college residence social event (21%),⁷¹ the report also refers to incidents of sexual assault and harassment occurring at 'university-affiliated camps and travel', exchange and overseas trips, private residences and professional work placements.⁷² The report further highlights that more than one in five students experienced technology-based sexual harassment in 2016, which included 'repeated or inappropriate advances on email, social networking websites and internet chat rooms and sexually explicit emails or SMS messages'.⁷³

A key issue that has emerged from the national student survey is the scope of university responsibility for students harmed by sexual assault and harassment and the scope of application of relevant university policies and services. These questions have arisen in the context of:

- the relationship between universities and residential colleges (particularly where unlawful conduct occurs at a privately owned university college);
- the distinction, if any, between harm incurred by students as a result of sexual violence perpetrated on- or off-campus (for example, at university-sponsored cultural or sporting events, at off-campus student houses, or during student internships or field trips);⁷⁴
- the nexus with off-shore campuses and with universities facilitating student exchanges⁷⁵ and hosting international student placements; and

⁶⁹ *X v University of Western Sydney* [2014] NSWSC 82.

⁷⁰ Email from Lachlan Power, 2017 President, National Association of Australian University Colleges Inc. to Andrea Durbach, 22 February, 2017.

⁷¹ Commission's report, above n 15, chapter 3(a). The Commission's report highlights that '10% of students who experienced sexual assault in 2015 or 2016 said 'the most recent incident occurred at a residential college or university residence', with women (12%) 'more likely than men to be sexual assaulted at a residential college or university residence: chapter 3.5.

⁷² *Ibid* chapter 3.6, 3.7 and 3.8.

⁷³ *Ibid* chapter 3.9.

⁷⁴ Regulations imposed by the University Grants Commission in India, which apply to all universities, contain a broad definition of the term 'campus', which refers to an 'extended campus'. This includes 'places visited as a student ... including transportation provided for the purpose of commuting to and from the institution, the locations outside the institution on field trips, internships, study tours, excursions, short term placements, places used for camps, cultural festivals, sport meets, and other such activities where a person in participating in the capacity of an employee or student of the HEI': University Grants Commission, *UGC (Prevention, Prohibition and Redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institutions) Regulations, 2015* (2 May 2016), s 2(c) <http://www.ugc.ac.in/pdfnews/7203627_UCG_regulations-harassment.pdf>.

⁷⁵ Commission's report, above n 15, chapter 3.6(iii).

- the impact on students of online or technology-facilitated sexual violence.⁷⁶

The question of the scope of university responsibility in relation to sexual assault and harassment and the application of relevant policies, requires that policies are sufficiently flexible to cover the diverse range of sites where such conduct may occur, including online.

Off-shore campuses

The increasing number of universities with off-shore campuses has necessitated consideration of this relationship and the off-shore application of sexual assault and harassment policies of domestic universities.⁷⁷ While the implementation and application of domestic university policies off-shore will generally be subject to the contractual terms between a university and the local partners who manage or operate the off-shore campus, the domestic policies of universities relating to sexual assault and harassment should be expressly included in all documentation regulating a domestic university's relationship with off-shore campuses.⁷⁸

Online sexual violence

As new technology accelerates access to online university education, the risk of 'technology-facilitated sexual violence' (TFSV) is increasing, with corresponding imperatives for universities to develop effective institutional responses to this form of sexual assault and harassment.⁷⁹ TFSV behaviours include 'the sending of sexually explicit material via a mobile phone, email or the Internet without the consent of the subject; the use of Facebook groups to promote rape-supportive attitudes; ... the posting of degrading, sexually based comments about female students and teachers; ... and the use of online dating sites to procure a sexual assault'.⁸⁰ Despite common misconceptions about the impact of online sexual assault and harassment (given the absence of a physical act), the harm associated with online

⁷⁶ The University of Toronto Policy on Sexual Violence and Sexual Harassment (effective 1 January 2017) defines cyber sexual violence as including, but not limited to:

knowingly publishing, distributing, transmitting, selling, making available or advertising an intimate image of a person, knowing that the person depicted in the image did not give their consent to that conduct, or being reckless as to whether or not that person gave their consent to that conduct. An intimate image includes but is not limited to a visual recording of a person made by any means, including a photographic, digital or video recording, in which the person is nude and/or engaged in sexual activity.

University of Toronto, *Policy on Sexual Violence and Sexual Harassment* (15 December 2016), 2 <<http://www.ombudsperson.utoronto.ca/resources/sexualviolenceandharassmentpolicy2017.pdf>>.

⁷⁷ The State University of New York (SUNY) Sexual Assault & Violence Response resources website refers a student studying overseas to the Sexual Assault Support and Help for Americans Abroad (SASHAA) website, which has useful contacts and support information. See SASHAA, *Sexual Assault Support and Help for Americans Abroad* <<https://sashaa.org/>>; State University of New York, *Sexual Assault & Violence Response (SAVR) Resources* (2017) <<https://www.suny.edu/violence-response/>>.

⁷⁸ RMIT Australia policies, including its Student Conduct Policy, apply at RMIT Vietnam: Email from RMIT Vietnam to Kirsten Keith, 20 February 2017. RMIT's Sexual Harassment Policy 'is applicable to all RMIT locations whether in Australia or overseas': RMIT University, *Sexual Harassment Policy* (2017) <<http://www1.rmit.edu.au/browse/Staff%2FWorkplace%20essentials%2FPolicies%20and%20procedures%2FHuman%20resources%2FEthical%20conduct%2FSexual%20harassment%20policy/>>. See also the US non-profit private university Webster University, which has campuses globally, including in Thailand. Webster's sexual assault policy 'includes all University campuses; all locations where University-sponsored events and activities occur; and all online, skype, and social media activity initiated by a student or employee of the University that may impact others in our University': Webster University, *Policy on Sexual Assault, Harassment, and Other Sexual Offences* (1 June 2015) <<http://www.webster.ac.th/currentstudents/studenthandbook/sexualassaultpolicy.html>>.

⁷⁹ Nicola Henry and Anastasia Powell, 'Sexual Violence in the Digital Age: The Scope and Limits of Criminal Law' (2016) 25(4) *Social and Legal Studies Journal* 397.

⁸⁰ Nicola Henry and Anastasia Powell, 'The Dark Side of the Virtual World: Towards a Digital Sexual Ethics' in Nicola Henry and Anastasia Powell (eds), *Preventing Sexual Violence: Interdisciplinary Approaches to Overcoming a Rape Culture* (Palgrave Macmillan, 2014) 84, 84.

sexual violence can have long-term detrimental effects on the victim.⁸¹

In response to increasing TFSV, universities are drafting policies or expanding definitions to include such conduct. McGill University's (Canada) Policy against Sexual Violence defines sexual violence as conduct that 'can happen in person, by phone or online'.⁸² A failure to have policies that captured online anonymous stalking was considered in the Canadian case of *Ford v Nipissing* (2011), where a university was held liable under human rights legislation for failing to have adequate 'policies and procedures in place to address matters related to sexual harassment ... to deal with [an] offensive and threatening email'.⁸³

In addressing the issue of scope of universities' responsibility, End Rape on Campus Australia (EROC Australia), in its submission to the Australian Human Rights Commission, makes an important point that underscores the university's obligation to ensure the wellbeing of students, irrespective of the site at which they might incur harm:

*Although many universities restrict their attention to incidents which have occurred on campus, EROC Australia believes that this distinction is artificial. All instances of sexual assault experienced by a student have the potential to affect their ability to study and to participate in the university community regardless of where the assault took place.*⁸⁴

Incidents of sexual assault and harassment that occur off-campus, at off-shore campuses and, increasingly, online require universities to ensure that their administration has processes in place to respond appropriately and effectively. For many Australian universities, this will entail expeditious revision of sexual assault and harassment policies, procedures and practices, support services and educational programs to reflect new areas of regulation and to demonstrate that the needs of victims that arise in different contexts are appropriately and comprehensively protected.

2.1.4 Contributing to the resolution of a 'serious national issue'

*We also have a significant opportunity to drive broader social change and progress ... Our role as universities is to identify this behaviour and to play a determined role in changing attitudes that give rise to it. If we can help bring about a cultural shift among our 1.3 million students, there will be enormous benefits for Australian society as they go through their lives.*⁸⁵

⁸¹ There are increasing media reports of technology being used to facilitate or promote sexual assault or harassment, via for instance the filming without consent of sexual acts – whether consensual or not – that are then streamed via social media platforms or the use of Facebook or other social media pages to post degrading comments about persons based on their gender, sexuality or other physical attribute. Revenge Porn is a criminal offence within some jurisdictions, including Victoria and South Australia, and it is appropriate for university policies to be drafted to reflect this. See generally Lucy McNally, "'Revenge Porn' to be Criminalised in Response to NSW Privacy Inquiry', *ABC News*, 5 September 2016 <<http://www.abc.net.au/news/2016-09-05/criminalising-revenge-porn-in-nsw-a-step-closer/7813446>>.

⁸² McGill University, *Policy Against Sexual Violence* (1 December 2016), 2 <http://www.mcgill.ca/secretariat/files/secretariat/policy_against_sexual_violence.pdf>.

⁸³ *Ford v Nipissing University* [2011] HRTO 204, [72].

⁸⁴ EROC Australia, 'Connecting the Dots: Understanding Sexual Assault in University Communities', submission to Australia Human Rights Commission, *University Sexual Assault and Sexual Harassment Project*, January 2017, executive summary <<https://static1.squarespace.com/static/5762fc04f5e231826f09afae/t/58b3d08ddb29d6e7a2b8271d/1488179368580/Connecting+the+dots.pdf>>.

⁸⁵ Jacobs, above n 55.

The expeditious and effective resolution of complaints of sexual assault and harassment, the provision of essential therapeutic and academic support for victims, and the development of ongoing measures to prevent sexual violence, are all critical components of a university sexual assault and harassment strategy. These measures, however, require corresponding action by universities to effect changes in attitudes, behaviours and practices that contribute to the cultural change necessary to prevent sexual violence.

Given the impact of this violence on the overall health of society,⁸⁶ in addition to university leadership and education programs on the issue, universities can make important contributions by committing to support research directed at improving policies and procedures and preventing sexual violence. Undertaking research with external agencies, sexual assault services, relevant government departments, and women's organisations allows universities to contribute to innovative strategies and mechanisms to address the problem of sexual violence more broadly. It also enables increased understanding 'within the academy' of issues such as the relationship between alcohol and sexual assault and harassment, the effectiveness of prevention measures, the design of bystander programs, and the essential components of effective student support services.

Examples of innovative research initiatives that have sought to improve policies and procedures and prevent campus sexual violence are the Gendered Violence Research Network (GVRN) at UNSW and the Sexual Assault Response Team (SART) at the University of Cape Town (UCT). The GVRN is an interdisciplinary network whose researchers explore 'the causes, consequences [of] and intervention strategies for gendered violence in Australia and internationally, ... with the goal of reducing and mitigating the harmful effects of gendered violence' in all contexts, including universities.⁸⁷

Similarly, SART brings together medical and public health practitioners and researchers who review and analyse cases of campus sexual violence to establish trends and deficiencies in support services, explore improved mechanisms to promote accountability, and devise and implement prevention interventions and sexual violence awareness campaigns.⁸⁸ Interestingly, SART has published reviews of reported de-identified cases of campus sexual assault with a view to 'empower[ing] the university community with the knowledge and skills to effectively respond to and prevent sexual violence on campus'.⁸⁹ These publicly available anonymous case reviews addressed a number of key issues, including the advice of first responders and its impact on the preservation of evidence; the risks associated with internal (residential college) management of cases of sexual

⁸⁶ 'Violence is more damaging to the health of Victorian women aged 15–44 years than any other well-known risk factors, including high blood pressure, obesity and smoking': VicHealth, *Preventing Violence Against Women* <<https://www.vichealth.vic.gov.au/our-work/preventing-violence-against-women>>. See also Morrison, Quadara and Boyd, above n 59; American College Health Association (ACHA), *Position Statement on Preventing Violence on College and University Campuses* (December 2011) <https://www.acha.org/documents/resources/guidelines/ACHA_Statement_Preventing_Sexual_Violence_Dec2011.pdf>.

⁸⁷ Gendered Violence Research Network, Arts and Social Sciences, UNSW Sydney <<https://www.arts.unsw.edu.au/research/gendered-violence-research-network/>>. The GVRN has also been involved in the development and conduct of training programs in consultation with staff and students at UNSW Residential Colleges. The program includes how to recognise 'gendered misconduct' (which encompasses everyday sexism, racism and homophobia, sexual and gender-based harassment, dating violence/domestic and family violence, hazing and initiation rituals, stalking, technology-facilitated abuse and sexual assault); the impact of gendered misconduct on students who are victims, perpetrators, other residents and organisations; and an examination of bystander intervention theory and practice.

⁸⁸ Sinegugu Duma, *UCT SART Quarterly Report*, University of Cape Town <https://www.uct.ac.za/usr/news/downloads/2016/UCT_SART_Quarterly_Report.pdf>.

⁸⁹ *Ibid* 1.

assault via a process of mediation between the parties; the importance of early reporting to a dedicated forensic unit, and the follow-up care of survivors.

Concluding observations

The increasing global and national focus on sexual violence within university settings has required Australian universities to revisit the nature of the duty of care between university and student, particularly in relation to student safety, wellbeing discrimination and academic progress.

In Australia, significant sources of evidence of university sexual assault and harassment, including the NUS *Talk About It* surveys in 2011 and 2015 and the Commission's 2017 national student survey and online submissions, combined with growing public concern around the issue, are compelling universities to adopt a more comprehensive and rigorous approach to the management and prevention of university sexual violence.

In addition to the finding that there are concerning levels of university sexual assault and harassment predominantly affecting women students,⁹⁰ the Commission's report indicates that Aboriginal and Torres Strait Islander students, CALD and international students, students with disability, and LGBTIQ students were the most likely groups to experience such conduct.⁹¹

Of particular concern was the Commission finding that responses of universities to complaints of sexual assault and harassment were often inappropriate or inadequate and risked exacerbating a victim's trauma. Given the potential enduring physical and psychological consequences for student victims of sexual assault and harassment, the task of universities in addressing this issue via comprehensive remedial, therapeutic and academic support to victims (irrespective of the site or location of the perpetration of harm) must extend to a significant investment by universities in contributing to the cultural change necessary to prevent sexual violence 'just as much outside of the academy as within it'.⁹²

⁹⁰ Commission's report, above n 15, chapter 2.1 and 2.3.

⁹¹ Ibid chapter 2.4(a)-(e).

⁹² Ropers-Huilman, Williamsen and Hoffman, above n 54, 190.

3. Sexual assault and sexual harassment at universities: comparative legal and policy contexts

There has been considerable debate about the legal and moral/ethical responsibilities of universities to address the issue of sexual assault and harassment and the extent of these obligations. The failure of universities to respond appropriately to incidents of sexual assault and harassment is increasingly being challenged by students and staff as they seek redress via a range of mechanisms, including litigation.

While Australian case law on this point is undeveloped, international initiatives by governments and universities underscore the need for Australian universities to be proactive in designing effective responses to these issues. However, it is not only victims who are seeking redress via the courts. Those accused of perpetrating sexual assault and harassment are also suing their universities for failing to adhere to principles of due process or procedural fairness during internal disciplinary processes.⁹³

Legal obligations owed by universities towards their students, including the requirement that they provide a safe and inclusive learning environment, stem from various legal sources – including negligence under both common law and statute; anti-discrimination legislation; work, health and safety legislation; and, more recently, contract and consumer law. The nature and extent these obligations – particularly within the context of requiring universities to respond to allegations of sexual assault and harassment – are continuing to evolve.⁹⁴

This chapter first highlights the duty of care principle that is central to the university–student relationship. It then considers comparative international research highlighting key legislative and policy approaches that inform universities' obligations to respond to sexual assault and harassment in other countries, which may be instructive for policy and legal developments in Australia. The latter part of the chapter considers some of the key legal and policy sources that frame Australian universities' obligations to respond to and prevent sexual assault and harassment.

⁹³ See the Australian case *X v University of Western Sydney* [2014] NSWSC 82, which considered the lack of procedural fairness afforded to a student who was suspended following an incident involving alleged non-consensual sexual conduct. In the US, there have been many cases where students have successfully sought redress via the courts for the failure of universities, including Columbia and Brown, to comply with the principle of due process during disciplinary hearings relating to sexual assault or gender discrimination against them. In *John Doe v Columbia University*, No 15-1536 (2d Cir, 2016), the complainant successfully argued that, among other due process issues, the university's investigator and disciplinary panel had failed to act in accordance with procedures designed to protect accused students.

⁹⁴ For further discussion on universities and the duty of care, see Philip Lee, 'The Curious Life of *in loco parentis* in American Universities' (2011) 8 *Higher Education in Review* 81; Stanley Yeo, 'The Responsibility of Universities for Students' Personal Safety' (2002) 6 *Southern Cross University Law Review* 77.

3.1 Duty of care

*Universities have a clear duty of care when it comes to their students and we need to revisit the [Zellick] guidelines to make sure this duty is at the heart of them.*⁹⁵

The university–student relationship is often referred to as one in which the university through its staff assumes a pastoral responsibility in relation to students akin to the parent/guardian–child relationship. This ‘special’ relationship is based on the *in loco parentis* doctrine, which imposes a legal duty on universities to protect the personal safety of their students.⁹⁶ Under this well-established common law doctrine, universities have historically exercised control (care) over their students who acquired rights to protection.⁹⁷

However, the influence of the civil rights movement and changes in consumer potential and protection have reshaped the contours of the relationship between universities and their students.⁹⁸ While there have been few cases on point in Australia,⁹⁹ courts in the US have sought to balance the strictures of *in loco parentis* with student autonomy and freedom,¹⁰⁰ recognising that students ‘are adults in the contemplation of law and thus free agents in many aspects of their lives and life styles’.¹⁰¹ The increasing visibility of sexual assault cases on university campuses has ostensibly seen a shift back towards the *in loco parentis* doctrine, with universities increasingly being held to exercise ‘a duty to regulate and supervise foreseeable harm occurring on [university] property’.¹⁰²

3.2 International regulation of university sexual assault and harassment: legislative and policy frameworks

The **United States of America** (US) has been at the forefront of efforts to address the issue of sexual assault and harassment on university campuses with the enactment of Title IX of the *Education Amendments Act of 1972* and related legislation and policy initiatives. It provides an example of how legislation and policy have been utilised to respond to the issue of campus sexual assault and harassment.

Title IX legislation prohibits sex discrimination in any education program or activity receiving federal

⁹⁵ Nicola Dandridge, Chairperson of the Universities UK Taskforce and Chief Executive of Universities UK, quoted in Karen McVeigh, ‘University Leaders Call for New Rules on Sexual Violence Allegations’, *The Guardian*, 18 March 2016 <<https://www.theguardian.com/education/2016/mar/17/university-leaders-call-for-new-rules-on-sexual-violence-allegations>>.

⁹⁶ Yeo, above n 94, 79.

⁹⁷ Gwen Seaquist and Eileen Kelly, ‘Liabilities of Colleges and Universities for Assaults on Students: An Update’ (1995) 4(2) *Journal of Legal Studies in Business* 153.

⁹⁸ For a history of the changing relationship between universities and their students, see Lee, above n 94; Yeo, above n 94, 79.

⁹⁹ See generally Robert Horton, Kerry Smith and Abigail Tisbury, ‘The Tort of Negligence and Higher Education’ in Sally Varnham, Patty Kamvounias and Joan Squelch (eds), *Higher Education and the Law* (Federation Press, 2015) 178, 179–188.

¹⁰⁰ Lee, above n 94.

¹⁰¹ *Furek v University of Delaware* (1991) 594 A 2d 506, 516.

¹⁰² *Ibid* 522.

funding.¹⁰³ The term 'sex discrimination' was considered by the Supreme Court in *Davis v Monroe County Bd of Ed* (1999), which held that sexual harassment may amount to sex discrimination under Title IX if it is shown that the harassment 'is so severe, pervasive, and objectively offensive' and 'undermines and detracts from the victims' educational experience, that the victims are effectively denied equal access to an institution's resources and opportunities'.¹⁰⁴ The court further determined that under Title IX, students may seek monetary damages from universities that have been 'deliberately indifferent' to known acts of student-on-student sexual harassment, where such harassment is so severe and pervasive that it creates an environment that negates the victim's educational experience and equal access to education.¹⁰⁵

In 2011, the US Department of Education issued a 'Dear Colleague' letter that provided information and guidance to colleges and universities regarding their Title IX obligations, including the range of conduct covered by Title IX. The letter expressly acknowledged that sexual violence fell within the ambit of Title IX and further recognised that sexual harassment, as a form of sex discrimination, includes acts of sexual violence.¹⁰⁶ It further highlighted the requirement that universities implement education programs and policies to prevent and protect against sexual assault and harassment.¹⁰⁷

The scope of university responsibility in relation to student victims of sexual assault and harassment was indirectly considered by the Kansas Court of Appeal in *Yeasin v University of Kansas* (2015),¹⁰⁸ which noted that the 'Dear Colleague' letter states that institutions may have an obligation to respond to student-on-student harassment claims that involve off-campus incidents that are not part of an education program or activity.¹⁰⁹ However, the Court of Appeal clarified that the 'Dear

¹⁰³ Under Title IX of the *Education Amendments of 1972*, 20 USC §1681 et seq, 'No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.'

¹⁰⁴ *Davis v Monroe County Bd. of Ed.* (97-843) 526 US 629 (1999) 631. See also United States Department of Education, Office for Civil Rights, *Dear Colleague* letter (4 April 2011), 1 <<https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf>>.

¹⁰⁵ *Davis v Monroe County Bd. of Ed.* (97-843) 526 US 629 (1999). See also *Gebser v Lago Vista Independent School Dist.* 524 US 274 (1998) where the 'deliberate indifference' standard was first applied in a legal action relating to teacher-student sexual harassment. The 'deliberately indifferent standard' is subject to criticism, with scholar Catherine MacKinnon advocating for the application of the international human rights liability standard of 'due diligence' instead. See Catherine MacKinnon, 'In Their Hands: Restoring Institutional Liability for Sexual Harassment in Education' (2016) 125(7) *Yale Law Journal*, 2040, 2067-2085.

¹⁰⁶ United States Department of Education, above n 104, 1.

¹⁰⁷ Title IX of the *Education Amendments of 1972*, 20 USC §1681 et seq. See also *ibid* 4, stating that '[i]f a school knows or reasonably should know about student-on-student harassment that creates a hostile environment, Title IX requires the school to take immediate action to eliminate the harassment, prevent its recurrence, and address its effects'.

¹⁰⁸ *Yeasin v University of Kansas*, 113,098 (KS Ct App, 2015).

¹⁰⁹ The Dear Colleague letter relevantly states:

Schools may have an obligation to respond to student-on-student sexual harassment that initially occurred off school grounds, outside a school's education program or activity. If a student files a complaint with the school, regardless of where the conduct occurred, the school must process the complaint in accordance with its established procedures. Because students often experience the continuing effects of off-campus sexual harassment in the educational setting, schools should consider the effects of the off-campus conduct when evaluating whether there is a hostile environment on campus. For example, if a student alleges that he or she was sexually assaulted by another student off school grounds, and that upon returning to school he or she was taunted and harassed by other students who are the alleged perpetrator's friends, the school should take the earlier sexual assault into account in determining whether there is a sexually hostile environment. The school also should take steps to protect a student who was assaulted off campus from further sexual harassment or retaliation from the perpetrator and his or her associates.

United States Department of Education, above n 104, 4. See also the 2014 Guidance from the Department of Education that also refers to universities' responsibility under Title IX to process complaints of sexual harassment that occur off-campus. The central issue appears to be whether there are any continuing effects from an on-campus or off-campus education program or activity that are creating or contributing to a hostile environment. If so, universities are to address it in the same manner as if it were an on-

Colleague' letter did not 'direct schools to take action off-campus', but required universities to 'take steps to prevent or eliminate a sexually hostile environment'.¹¹⁰ It held it was 'obvious that the only environment the University can control is on campus or at University sponsored or supervised events. After all, the University is not an agency of law enforcement but is rather an institution of learning'.¹¹¹ Such reasoning accords with the approach taken in *Davis v Monroe County Bd* (1999), where the Supreme Court referred to liability arising where 'the recipient retains substantial control over the context in which the harassment occurs'.¹¹² Therefore, provided there is a nexus or sufficient connection to an education program or activity, it may be possible to claim damages under Title IX for sexual harassment that occurred off-campus.¹¹³

Since the implementation of Title IX, the US has enacted and amended various pieces of legislation targeting campus sexual assault. This includes the *Clery Act*,¹¹⁴ which requires, inter alia, colleges and universities that receive federal funding to disclose protocols for emergency responses and annual crime statistics, including rape and sexual assault on or near campus.¹¹⁵ The law was amended in 1992 to include the *Campus Sexual Assault Victim's Bill of Rights*, which requires universities and colleges to afford sexual assault victims certain rights, including informing victims of available counselling services and, following a report of campus sexual assault, the right of victims to seek alternative living arrangements or transfer of classes to prevent unnecessary contact with the alleged assailant.¹¹⁶ Further, from 2013 the *Campus Sexual Violence Elimination Act* (SaVE)¹¹⁷ imposed new reporting requirements for universities, broadening the *Clery Act* category of reportable crimes to include domestic violence, dating violence and stalking. It also requires universities to offer primary prevention and awareness programs, including bystander training, on sexual misconduct and related offences for all incoming students and new employees.¹¹⁸

campus behaviour facilitating such a hostile environment: United States Department of Education, Office for Civil Rights, *Question and Answers on Title IX and Sexual Violence* (29 April 2014), 29–30 <<https://www2.ed.gov/about/offices/list/ocr/docs/qa-201404-title-ix.pdf>>.

¹¹⁰ *Yeasin v University of Kansas*, 113,098 (KS Ct App, 2015).

¹¹¹ *Ibid.*

¹¹² *Davis v Monroe County Bd. of Ed.* (97-843) 526 US 629 (1999) 646.

¹¹³ *Ibid.* See also Paula A Barran and Jeffrey D Jones, 'Off-Campus Harassment: Identifying the Geographical Reach of Title IX Compliance', 2013 *URMIA Journal Reprint* <http://www.higheredcompliance.org/resources/resources/BarranJones_2013URMIAJournal2.pdf>.

¹¹⁴ *Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act* 20 USC §1092(f)(1)–(15) (2012). The Act was initially called the *Crime Awareness and Campus Security Act of 1990*, but, following amendments in 1998, it was renamed in honour of Jeanne Clery, who was raped and murdered in her residential hall room. For further information, see generally Lauren P Schroeder, 'Cracks in the Ivory Tower: How the Campus Sexual Violence Elimination Act Can Protect Students from Sexual Assault' (2014) 45(4) *Loyola University Chicago Law Journal* 1195, 1212–1213.

¹¹⁵ See generally *Jeanne Clery Act Information* (2016) <<http://www.cleryact.info/clery-act.html>>; Know Your IX, *Clery Act* <<https://www.knowyourix.org/college-resources/clery-act/>>; Schroeder, above n 114, 1212–1214. To assist universities in ensuring that they comply with the various requirements under the *Clery Act*, the US Department of Education has produced a handbook with guidelines on campus safety and security reporting: United States Department of Education, Office of Postsecondary Education, *The Handbook for Campus Safety and Security Reporting* (June 2016) <<https://www2.ed.gov/admins/lead/safety/handbook.pdf>>.

¹¹⁶ S 1289 – 102nd Congress, *Campus Sexual Assault Victims' Bill of Rights Act of 1991*, ss 2(2)(g)(8), (9); Schroeder, above n 114, 1212.

¹¹⁷ The *Campus Sexual Violence Elimination Act* is contained within s 304 of the *Violence Against Women Reauthorization Act*, Pub L No 113-4, 127 Stat 54 (2013). See Schroeder, above n 114, 1224.

¹¹⁸ Schroeder, above n 114, 1224–1228; see also American Council on Education, *New Requirements Imposed by the Violence Against Women Reauthorization Act* (1 April 2014) <<http://www.acenet.edu/news-room/Documents/VAWA-Summary.pdf>>. For further information on US legislation targeting campus sexual assault and harassment, both broadly and more specifically in relation to

In addition to the specific legislation targeting sexual assault on campus, and as part of an initiative to strengthen compliance with various legal obligations, the White House in 2014 established a National Taskforce to Protect Students from Sexual Assault to work with different federal agencies to develop a coordinated national response to the issue.¹¹⁹ Its first report, *Not Alone*, details various areas for action and recommendations across a diverse range of topics, including:

- the development of a model reporting and confidentiality protocol;
- the provision of a toolkit to assist universities to develop and conduct campus climate surveys to help identify the extent of sexual violence and related issues, including barriers to reporting and cultural attitudes;¹²⁰ and
- the creation of the NotAlone.gov website, which provides students with information about filing complaints against their universities for failing to comply with Title IX and other obligations.¹²¹

In January 2017, the Taskforce also issued a *Guide for University and College Presidents, Chancellors and Senior Administrators*, which highlights six elements to be considered as part of any institutional plan to address sexual assault against students: coordinated campus and community response; prevention and education; policy development and implementation; reporting options, advocacy and support services; climate surveys, performance measurement and evaluation; and transparency.¹²²

In addition to the federal obligations imposed by Title IX and related legislation, numerous states have also enacted legislation addressing the issue of sexual assault on campus, with New York State passing Bill S5965, which includes a provision relating to the implementation of a state-wide, uniform definition of affirmative consent legislation.¹²³ With other states, such as California and Connecticut,¹²⁴ adopting similar legislation, many universities have incorporated the affirmative consent standard

prevention, see; Susan Hanley Duncan, 'The Devil Is in the Details: Will the Campus SaVE Act Provide More or Less Protection to Victims of Campus Assaults?' (2014) 40 *Journal of College and University Law* 4443; Schroeder, above n 114, 1212–1214.

¹¹⁹ The mandate of the Task Force was to provide educational institutions with best practices for compliance; increase government enforcement; improve transparency of government enforcement; increase public awareness of institutional sexual assault compliance; and enhance coordination among agencies in enforcement efforts. See generally The White House, Office of the Press Secretary, *Memorandum – Establishing a White House Task Force to Protect Students from Sexual Assault* (22 January 2014) <<https://www.whitehouse.gov/the-press-office/2014/01/22/memorandum-establishing-white-house-task-force-protect-students-sexual-a>>.

¹²⁰ White House Task Force to Protect Students from Sexual Assault, *Climate Surveys: Useful Tools to Help Colleges and Universities in Their Efforts to Reduce and Prevent Sexual Assault* (April 2014) <<https://www.justice.gov/ovw/page/file/910426/download>>.

¹²¹ White House Task Force to Protect Students from Sexual Assault, *Not Alone, The First Report of the White House Task Force to Protect Students from Sexual Assault* (April 2014) <<https://www.justice.gov/ovw/page/file/905942/download>>.

¹²² White House Task Force to Protect Students from Sexual Assault, *Preventing and Addressing Campus Sexual Misconduct: A Guide for University and College Presidents, Chancellors and Senior Administrators* (January 2017) <<https://obamawhitehouse.archives.gov/sites/obamawhitehouse.archives.gov/files/images/Documents/1.4.17.VAW%20Event.Guide%20for%20College%20Presidents.PDF>>.

¹²³ *An Act to Amend the Education Law*, Senate Bill S5965 (2015). See also New York State, *Enough Is Enough: Combatting Sexual Assault on College Campuses* <<https://www.ny.gov/programs/enough-enough-combating-sexual-assault-college-campuses>>.

¹²⁴ *An Act Concerning Affirmative Consent*, Pub Act No 16-106 (2016). California passed legislation amending the Education Code in relation to student safety mandating post-secondary institutions that receive state funding to adopt a policy 'concerning sexual assault, domestic violence, dating violence, and stalking, as defined in the federal *Higher Education Act of 1965* 20 USC §1092(f) involving a student, both on and off campus' which includes a definition of affirmative consent. See Senate Bill No 967, *Student Safety: Sexual Assault*, ch 748, California (2014).

into their policies, including California State University and State University of New York (SUNY).¹²⁵ The New York legislation also requires higher education institutions to implement a policy for alcohol and/or drug use amnesty protecting victims (or bystanders) who report incidents of sexual assault or other related behaviour from being charged with alcohol or drug use in violation of the institute's code of conduct.¹²⁶

A review of some of the **Canadian** legislation indicates a noticeable legislative trend during 2016–2017 requiring universities to create, implement and periodically review a stand-alone policy on sexual violence. In almost every province, there is now a proposed Bill to this effect, with Nova Scotia introducing the *Sexual Violence Action Plan* in April 2016 that requires universities to develop sexual violence policies with student input, to review these policies at least every three years, and to collect data regarding sexual violence.¹²⁷ Nova Scotia has also signed a memorandum of understanding with universities that ties annual increases of provincial funding to various outcomes, including the 'creation of sexual violence prevention policies'.¹²⁸

Ontario's *Sexual Violence and Harassment Action Plan Act* of 2016 requires all colleges and universities that receive government funding to adopt stand-alone sexual violence and harassment policies that set out processes for responding to incidents of sexual assault.¹²⁹ It also requires universities and colleges to ensure that student input is considered when drafting policies that are subject to review every three years.¹³⁰ This legislation was introduced against the backdrop of more comprehensive, wide-reaching Ontario government action to address sexual violence across the community. It amends a total of six pieces of legislation over three years to create safer homes, workplaces and campuses, as well as stronger legal protections, as part of Ontario's \$41 million *It's Never Ok: Action Plan to Stop Sexual Violence and Harassment*.¹³¹

Similarly, in British Columbia, the *Sexual Violence and Misconduct Policy Act* of 2016 requires all public post-secondary institutions to establish and implement a stand-alone sexual misconduct policy, to be reviewed every three years.¹³² These policies must include procedures for making (and responding to) complaints and effective reporting processes.¹³³ Additionally, the legislation

¹²⁵ Jake New, 'The "Yes Means Yes" World', *Inside Higher Ed*, 17 October 2014 <<https://www.insidehighered.com/news/2014/10/17/colleges-across-country-adopting-affirmative-consent-sexual-assault-policies>>.

¹²⁶ *An Act to Amend the Education Law*, Senate Bill S5965 (2015). For a summary of the Bill, see Columbia University in the State of New York, *Summary of New York State 'Enough is Enough' Bill* <<https://sexualrespect.columbia.edu/new-york-state-legislation-campus-sexual-assault>>.

¹²⁷ See Bill 164, *Sexual Violence Action Plan Act*, 2nd Sess, 62nd Gen Assem, Nova Scotia, 2016. This legislation forms part of Nova Scotia's first national sexual violence strategy that was released in June 2015 and is detailed in the strategy report *Breaking the Silence: A Coordinated Response to Sexual Violence in Nova Scotia* (2015) Province of Nova Scotia <<http://novascotia.ca/coms/svs/docs/Sexual-Violence-Strategy-ENG.pdf>>.

¹²⁸ Michael Gorman, 'Nova Scotia University MOU gives Province Teeth, Minister Says', *CBC News*, 23 June 2016 <<http://www.cbc.ca/news/canada/nova-scotia/universities-nova-scotia-mou-1.3649515>>.

¹²⁹ *Sexual Violence and Harassment Action Plan Act (Supporting Survivors and Challenging Sexual Violence and Harassment)* SO 2016, c 2-Bill 132 sch 3(3).

¹³⁰ *Ibid* sch 3(4).

¹³¹ Ontario Government, *Its Never Okay: Action Plan to Stop Sexual Violence and Harassment, Progress Report 2015–2016* (2016) <https://files.ontario.ca/mi-2005_svhap_progress_report_en.pdf>.

¹³² *Sexual Violence and Misconduct Policy Act* SBC 2016, c 23.

¹³³ *Ibid* s 2.

explicitly requires a university to make its sexual violence policy publicly available on an internet site 'maintained by or on behalf of the post-secondary institution'.¹³⁴ This legislation forms part of the province's broader strategy to tackle sexual violence, the *Violence Free BC* strategy, which includes over \$70 million in annual investments in prevention and intervention services.¹³⁵

The legislation in both Ontario and British Columbia is relatively silent on how compliance with the new requirements will be monitored or enforced, beyond the requirement for periodic reviews by the university's governing body. However, in both provinces, the relevant minister may conduct, or require universities to conduct, campus surveys to gauge the effectiveness of policies and support services, or request information on the incidence of reported sexual assaults.¹³⁶

The issue of sexual harassment in the workplace in **India** has led to the introduction of specific legislation that requires employers, including universities, to prevent or deter sexual harassment in the workplace and to provide a complaints and redress mechanism. *The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013*¹³⁷ compels workplaces, including universities, to establish Internal Complaints Committees and stipulates that a female employee from a senior position within the workplace be appointed Committee Presiding Officer. The Presiding Officer and other members of an internal complaints committee must be 'committed to the cause of women or ... have experience in social work or have legal knowledge'.¹³⁸ The legislation further requires an external member of the committee to be appointed from the NGO sector or other associations committed to the cause of women, or with experience in the area of female sexual harassment. Committee members hold the position for a non-renewable period of three years.

Additionally, the Indian University Grants Commission, established by the government to set and maintain standards in higher education institutions,¹³⁹ has been proactive in addressing the issue of sexual assault and harassment at universities. The University Grants Commission's 2013 report, *Measures for Ensuring the Safety of Women and Programs for Gender Sensitization on Campuses*,¹⁴⁰ makes various recommendations, including the establishment of a Gender Sensitization Unit within the University Grants Commission to give effect to universities' sexual harassment policies and the provision of professional and full-time counselling services and female security staff at universities.¹⁴¹

The University Grants Commission has issued regulations that impose various obligations on higher education institutions, including:

¹³⁴ Ibid s 2(2).

¹³⁵ *A Vision for a Violence Free BC: Addressing Violence Against Women in British Columbia*, Canadian Domestic Homicide Prevention Initiative (2015), 2 <http://cdhpi.ca/sites/cdhpi.ca/files/A_Vision_for_a_Violence_Free_BC.pdf>.

¹³⁶ *Sexual Violence and Harassment Action Plan Act (Supporting Survivors and Challenging Sexual Violence and Harassment)* SO 2016, c 2-Bill 132, sch 3; *Ministry of Training, Colleges and Universities Act* RSO 1990 c M 19 s 9; see also *Sexual Violence and Misconduct Policy Act* SBC 2016, c 23, s 5.

¹³⁷ See generally *The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013* (India). The criminal law was also amended to support this Act: see *The Criminal Law Amendment Act 2013* (India) ss 354A–354D.

¹³⁸ *The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013* s 4, ch II.

¹³⁹ University Grants Commission, *Mandate* <<http://www.ugc.ac.in/page/Mandate.aspx>>.

¹⁴⁰ University Grants Commission, above n 35.

¹⁴¹ Ibid 6–8.

- publicly committing to a 'zero tolerance towards sexual harassment' policy;
- organising staff and student training programs to ensure awareness of rights in relation to sexual harassment;
- informing students and staff of the recourse available for victims of sexual harassment;
- ensuring that mechanisms and systems of redress are in place to curb and prevent sexual harassment on campus; and
- requiring half-yearly reviews of sexual harassment policies.¹⁴²

As with US legislation, noncompliance with the University Grants Commission regulations may lead to the withholding of government grants allocated to universities.¹⁴³

Significantly, the University Grants Commission Regulations, reflecting legislation, require every institution to establish an Internal Complaints Committees with a senior-level female Presiding Officer and at least 50% female membership.¹⁴⁴ These regulations, which also detail the process for making complaints and conducting investigations, are gender neutral, facilitating, for example, the filing by male and transgender students of complaints of sexual harassment.¹⁴⁵

As the Indian experience has sought to utilise discrimination in the workplace legislation as the enabling mechanism to address university sexual violence, in the **United Kingdom** (UK) equality and human rights legislation, such as the *Equality Act 2010*, imposes a duty on public authorities, including universities, to have 'due regard' to 'eliminat[ing] discrimination, harassment, victimisation' across all aspects of their work.¹⁴⁶ By extension, universities may be required to have due regard to the elimination of discrimination and harassment when making decisions on and formulating policies and practices.¹⁴⁷ Section 91 of the *Equality Act* also imposes obligations on higher education institutions, including universities, not to discriminate against students, including by 'subjecting the student to any detriment'.

The UK government has prioritised tackling sexual assault and harassment across the community since 2010, when the first cross-government strategy was adopted.¹⁴⁸ The subsequent 2016–2020 strategy stresses the importance of primary prevention in addressing the issue, recognising that

¹⁴² University Grants Commission, above n 74, s 3.

¹⁴³ Ibid s 12.

¹⁴⁴ Ibid ss 4(1), (2).

¹⁴⁵ 'UGC Ruling: Male Students Can Now File Sexual Harassment Complaints', *India Today*, 8 June 2016 <<http://indiatoday.intoday.in/education/story/ugc-regulation/1/686973.html>>.

¹⁴⁶ *Equality Act 2010* (UK) c 15, s 149(1). For further information, see Equality and Human Rights Commission, *Equality Act 2010, Technical Guidance on the Public Sector Equality Duty: England* (August 2014) <https://www.equalityhumanrights.com/sites/default/files/technical_guidance_on_the_psed_england.pdf>.

¹⁴⁷ *Equality Act 2010* (UK) c 15, s 149(1). For a discussion regarding the application of this Act to universities, see Louise Whitfield and Holly Dustin, *Spotted: Obligations to Protect Women Students' Safety and Equality: Using the Public Sector Duty & Human Rights Act in Higher and Further Education Institutions to Improve Policies and Practices on Violence against Women and Girls* (January 2015) End Violence Against Women, 6–8 <<http://www.endviolenceagainstwomen.org.uk/wp-content/uploads/Spotted-Obligations-to-Protect-Women-StudentsEy-Safety-Equality.pdf>>. See also *Pieretti v London Borough of Enfield* [2010] EWCA Civ 104; University of Oxford Equity and Diversity Unit, *Guidance for Members of the University of Oxford on Meeting the Public Sector Equality Duty* <<https://www.queens.ox.ac.uk/sites/www.queens.ox.ac.uk/files/6-PSED-guidance.pdf>>.

¹⁴⁸ UK Home Office, *Call to End Violence Against Women and Girls. Taking Action – the Next Chapter* (8 March 2012) <<https://www.gov.uk/government/publications/call-to-end-violence-against-women-and-girls-taking-action-the-next-chapter>>

‘educating and challenging young people about healthy relationships, abuse and consent is critical’.¹⁴⁹

In 2015, the government requested Universities UK to establish a national taskforce on violence against women, harassment and hate crime affecting students.¹⁵⁰ As part of its remit, the Universities UK Taskforce was requested to review a 1994 report on student disciplinary procedures, known as the Zellick guidelines, which provided advice to universities on how to address alleged student misconduct that might amount to a criminal offence. Essentially, the guidelines required complaints of sexual assault to be reported to the police prior to a university commencing any internal investigation. The Taskforce recommended the revision of the guidelines in light of increasing technological developments (and the potential for online harassment and abuse), and social and legal changes (with the emergence of the *Human Rights Act 1998* and the *Equality Act 2010* in particular) to ensure that university procedures and practices reflect these developments.

Following extensive consultations with university leaders, student representatives, academic experts and key stakeholders, in October 2016 the Universities UK Taskforce released its report, *Changing the Culture*,¹⁵¹ which contained various recommendations to universities on addressing the issue via effective prevention and response mechanisms. These include:

- an institution-wide approach to the issue, in conjunction with student unions, and embedding a zero-tolerance approach to sexual assault and other inappropriate behaviour across all university activities;
- regular impact assessments of the approach taken;
- the provision of appropriate resources necessary to address the issue; and
- the adoption by universities of evidence-based bystander intervention programs.¹⁵²

In the **Netherlands**, the *Equal Treatment Act 2005*¹⁵³ prohibits discrimination, including sexual harassment, and forms the basis for other legislation and policies that frame university obligations to address sexual assault and harassment. The *Collective Labour Agreement of Dutch Universities* (2015–2016) imposes various obligations on universities as employers and their employees. Of specific interest is article 1.12 governing ‘undesirable behaviour’, including sexual harassment, violence and discrimination, which requires universities to ‘appoint a counsellor whose task it is to offer initial assistance to those who have been confronted with undesirable behaviour and to offer initial assistance with regard to complaints pertaining to acts in violation of the Equal Treatment Act’.¹⁵⁴ It also requires universities to draft codes of conduct as a means of preventing forms of

¹⁴⁹ UK Home Office, *Ending Violence Against Women and Girls, Strategy 2016–2020* (March 2016), 16 <<https://www.gov.uk/government/publications/strategy-to-end-violence-against-women-and-girls-2016-to-2020>>.

¹⁵⁰ Department for Business, Innovation and Skills, ‘Business Secretary Calls on Universities to Tackle Violence Against Women on Campus’ (Press Release, 6 September 2015) <<https://www.gov.uk/government/news/business-secretary-calls-on-universities-to-tackle-violence-against-women-on-campus>>.

¹⁵¹ Universities UK, above n 32.

¹⁵² *Ibid* 58–59.

¹⁵³ See generally College Voor, *Equal Treatment Legislation* (1 May 2013) <<http://www.mensenrechten.nl/publicaties/detail/35931>>; Government of the Netherlands, *Prohibition of Discrimination* <<https://www.government.nl/topics/discrimination/contents/prohibition-of-discrimination>>.

¹⁵⁴ Association of Universities in the Netherlands, *Collective Labour Agreement of Dutch Universities* (2015), art 1.12 <http://vsnu.nl/files/documenten/CAO/Januari%202016/CAO_NU%20ENG%20jan2016.pdf>.

undesirable behaviour.¹⁵⁵ Such requirements are reflected directly within the terms of various universities' policies.¹⁵⁶

South Africa's constitutional framework – founded on principles of equality, dignity and freedom¹⁵⁷ – has informed many of the sexual assault and harassment policies adopted by South African universities. The *Sexual Harassment, Sexual Assault and Rape Policy and Procedures* of the University of the Witwatersrand states that it should be read within the context of the 'constitutional rights to equality, dignity and freedom and security of person; and specific laws governing labour practice and sexual offences'.¹⁵⁸ Similarly, the aims of Stellenbosch University's *Sexual Harassment Policy* states that '[w]herever sexual harassment occurs it impinges on the basic human rights of the individual and it undermines the values contained in the South African Constitution'.¹⁵⁹ Notably, the Sexual Violence Task Team at Rhodes University, in its 2016 report, '*We Will Not Be Silenced: A Three-Pronged Justice Approach to Sexual Offences and Rape Culture at Rhodes University/UCKAR*', states that the university management should recognise the need for 'significant change in the way we think and the way we interpret laws if the pervasive sexual violence in our institutions is ever going to end. This means committing to an interpretation of the law, within the bounds of the constitution, that favours substantive equality'.¹⁶⁰

At a policy level, a more targeted approach to addressing the issue of sexual assault at universities is evidenced by action being taken by the South African Department of Higher Education and Training. In October 2016, the Department announced a collaboration with higher education institutions, research and capacity-building organisations, social, police and justice services and NGOs to review existing responses to sexual and gender-based violence (SGBV) and adopt and implement new policies and measures aimed at improving the safety of students and staff in higher education.¹⁶¹ These organisations formed a technical task team that will conduct a needs analysis and prepare of a comprehensive SGBV strategy for the sector. Further, in February 2017, the Department of Higher Education and Training launched the national Sexual and Gender Based

¹⁵⁵ Ibid.

¹⁵⁶ See eg University of Groningen, *Code of Conduct Concerning Harassment, Sexual Harassment, Aggression, Violence and Discrimination* (2009) <<http://www.rug.nl/about-us/organization/rules-and-regulations/vertrouwelijkheid-klachten-bezwaar-beroep/siagd-gedragscode-09?lang=en>>. The Code of Conduct is 'pursuant to article 1.12 Collective Labour Agreement for Dutch Universities'.

¹⁵⁷ *Constitution of the Republic of South Africa 1996* ss 1, 9, 10, 12.

¹⁵⁸ University of the Witwatersrand, *Sexual Harassment, Sexual Assault and Rape Policy and Procedures* (26 October 2013), 2 <<https://www.wits.ac.za/media/wits-university/students/gender-equity-and-tolerance/documents/HRG.10%207%20Apr%202014%20Wits%20Sexual%20Harassment%20Policy.pdf>>.

¹⁵⁹ Stellenbosch University, *Sexual Harassment: Policy and Procedure for Staff* (2000), 1 <<http://www0.sun.ac.za/hr/docs/industrial-relations/IR0156-Sexual-Harassment-Policy-and-Procedure-for-Staff.pdf>>. The reach of the equality principles under the South African Constitution is illustrated in a review of the University of Cape Town's Sexual Discrimination and Harassment Office (DISCHO), which refers to the application of the principles 'of promoting equality, preventing unfair discrimination and ensuring that institutional cultures and climates are inclusive and respectful of human rights and dignity and appreciative of our diversity' on DISCHO's legislative framework and compliance responsibilities: University of Cape Town, *Review Report of DISCHO University of Cape Town* (11 December 2015), 9 <https://www.uct.ac.za/usr/news/downloads/2016/DISCHO_Review_Report_2016.pdf>.

¹⁶⁰ Sexual Violence Task Team, '*We Will Not Be Silenced: A Three-Pronged Justice Approach to Sexual Offences and Rape Culture at Rhodes University/UCKAR*' (December 2016) Rhodes University, 98 <<https://www.ru.ac.za/media/rhodesuniversity/content/equityinstitutionalculture/documents/Sexual%20Violence%20Task%20Team%20Report.pdf>>.

¹⁶¹ Department of Higher Education and Training, *DHET Appoints Team to Address SGBV in HE institutions* (6 October 2016) <<http://www.dhet.gov.za/SiteAssets/Media/Statements/DHET%20SGBV%20task%20team%20061016.pdf>>. See also HEAIDS, *Consultations, New Task Team Propel Higher Education Sector Action on Rape, Gender-Based Violence* (6 October 2016) <<http://heids.org.za/news/consultations-new-task-team-propel-higher-education-sector-action-on-rape-gender-based-violence/>>.

Violence Dialogues, which are being employed at higher education institutions to inform a sector-wide strategy to tackle SGBV.¹⁶²

3.3 Australian legal and policy framework

Australia's university sector operates within Australia's federated constitutional system. While the Australian government is the major funder of higher education¹⁶³ and regulates qualities and standards at Australia's universities, most universities are established under state and territory Acts of Parliament and are subject to state reporting requirements that differ between jurisdictions.¹⁶⁴ Specific state and territory legislation regulates some residential colleges,¹⁶⁵ and universities and colleges are also be subject to anti-discrimination, work, health and safety, and criminal legislation in relevant jurisdictions.

In contrast with the comparative international experiences highlighted above, Australian law is largely silent as to obligations attaching to universities to respond to issues of sexual assault and harassment. While there is no explicit legislative framework dealing with these issues, anti-discrimination and workplace safety laws provide opportunities for redress where universities fail to effectively respond to and prevent sexual assault and harassment. Additionally, the *Australian Tertiary Education Quality and Standards Agency Act 2011* (Cth) and the associated Higher Education Standards Framework provide some prospect for enhanced regulation in this regard.

3.3.1 Anti-discrimination legislation

Federal, state and territory anti-discrimination and equal opportunity legislation impose obligations on the university sector that extend to addressing the issue of sexual assault and harassment.¹⁶⁶

The **Sex Discrimination Act 1984 (Cth)** protects people from discrimination based on their sex, sexual orientation, gender identity, intersex status, marital or relationship status, pregnancy and breastfeeding or family responsibilities. The Act defines sexual harassment as any 'unwelcome sexual advance, or an unwelcome request for sexual favours' or 'other unwelcome conduct of

¹⁶² Department of Higher Education and Training, 'Deputy Minister Mduzuzi Manana Launches Sexual and Gender Based Violence Dialogues at University of Zululand' (Press Release, 24 February 2017) <<http://www.gov.za/speeches/sexual-and-gender-based-violence-dialogues-21-feb-2017-0000>>.

¹⁶³ See Australian Government Department of Education and Training, *Higher Education Funding* (3 May 2017) <<https://www.education.gov.au/funding>>.

¹⁶⁴ PhillipsKPA, *Review of Reporting Requirements for Universities: Final Report* (December 2012) LH Martin Institute, [6.4] <<http://www.lhmartininstitute.edu.au/userfiles/files/news-media/FinalReportReviewofReportingRequirementsForUniversities.pdf>>.

¹⁶⁵ See eg *Saint John's College Act 1857* (NSW); *Saint Paul's College Act* (1854) (Private Act) (NSW).

¹⁶⁶ Universities have obligations under state anti-discrimination and/or equal opportunity legislation to address sexual assault and harassment. In New South Wales, s 22E of the *Anti-Discrimination Act 1977* (NSW) expressly prohibits harassment at educational institutions, including universities. Similarly, the equal opportunity legislation in Victoria and Western Australia contains express prohibitions regarding sexual harassment at educational institutions: *Equal Opportunity Act 1984* (WA); *Equal Opportunity Act 2010* (Vic). See *Equal Opportunity Act 2010* (Vic) s 92 for a definition of sexual harassment that includes sexual assault, and s 98, which expressly prohibits sexual harassment at an educational institution. Additionally, s 60 of the *Discrimination Act 1991* (ACT) provides that it is unlawful for a student to be subject to sexual harassment by either a staff member or a student, and s 86(2) of the *Equal Opportunity Act 1984* (SA) makes it unlawful for staff of an educational authority to subject a student to sexual harassment. Anti-discrimination legislation in the Northern Territory, Queensland and Tasmania does not include provisions specifically relating to educational institutions.

a sexual nature¹⁶⁷ that makes a person feel offended, humiliated or intimidated and includes one-off incidents,¹⁶⁸ and sexual harassment conducted via 'new technologies'.¹⁶⁹ Section 28F(2) of the Act makes it unlawful for an adult student (who has attained the age of 16 years) at an educational institution¹⁷⁰ 'to sexually harass a student or member of staff of the institution'¹⁷¹ and s 28F(2B) expands this protection to include incidents where a student is sexually harassed by a student from another educational institution.¹⁷² While the Act itself is silent as to the extent of the obligations of universities to prevent or respond to incidents of sexual harassment on campus, as employers, universities may be held vicariously liable for sexual harassment by their employees – including situations where conduct may give rise to a 'hostile work environment'.¹⁷³ Such liability may be minimised by universities showing 'that they have taken all reasonable steps to prevent discrimination or harassment from occurring in their workplaces and that they have responded appropriately to resolve incidents of ... harassment'.¹⁷⁴

3.3.2 Work health and safety legislation

The **Work Health and Safety Act 2011 (Cth)** (*WHS Act*)¹⁷⁵ provides for a 'nationally consistent framework to secure the health and safety' of workers and workplaces by 'protecting workers and other persons against harm to their health, safety and welfare through the elimination or minimisation of risks arising from work'¹⁷⁶ and 'assisting ... workers to achieve a healthier and safer working environment'.¹⁷⁷ In the university context, the term 'workers' would extend to all university employees, students gaining work experience, volunteers, and contractors or subcontractors.¹⁷⁸ Those employed in research roles, tutors and college resident fellows may also fall within the term and be subject to the protections afforded by the Act.

The legislation imposes various duties on 'a person conducting a business or undertaking', a term that extends to universities.¹⁷⁹ This includes a primary duty of care to ensure 'so far as is reasonably

¹⁶⁷ *Sex Discrimination Act 1984* (Cth) s 28A.

¹⁶⁸ Australian Human Rights Commission, *Federal Discrimination Law: Chapter 4 – The Sex Discrimination Act*, 4.6.3 Single Incidents <<http://www.humanrights.gov.au/federal-discrimination-law-chapter-4-sex-discrimination-act#463>>.

¹⁶⁹ Included under the examples of sexual harassment listed in the *Sex Discrimination, Know Your Rights* publication are 'emailing pornography or rude jokes' and 'sending sexually explicit text'. See Australian Human Rights Commission, *Sex Discrimination, Know Your Rights* (2014), 3 <https://www.humanrights.gov.au/sites/default/files/Sex%20Discrimination_2014_Web.pdf>.

¹⁷⁰ Section 4 of the *Sex Discrimination Act 1984* (Cth) defines an 'educational institution' as 'a school, college, university or other institution at which education or training is provided'.

¹⁷¹ *Ibid* s 28F.

¹⁷² *Sex and Age Discrimination Legislation Amendment Act 2011* (Cth) s 57. The amendments were incorporated into s 28F of the *Sex Discrimination Act 1984* (Cth).

¹⁷³ *Sex Discrimination Act 1984* (Cth) s 106.

¹⁷⁴ Australian Human Rights Commission, *Vicarious Liability* <<https://www.humanrights.gov.au/employers/good-practice-good-business-factsheets/vicarious-liability>>.

¹⁷⁵ *Work Health and Safety Act 2011* (Cth).

¹⁷⁶ *Ibid* s 3.

¹⁷⁷ *Ibid* s 3(1)(c).

¹⁷⁸ *Ibid* s 7.

¹⁷⁹ Joan Squelch, 'Workplace Health and Safety' in Sally Varnham, Patty Kamvounias and Joan Squelch (eds), *Higher Education and*

practicable, the health and safety of workers' while they are at work.¹⁸⁰ This duty of care further requires, 'so far as is reasonably practical', the 'provision and maintenance of a work environment without risks to health and safety'.¹⁸¹ It also requires workers and other persons to take reasonable care for their own health and safety and to 'take reasonable care that [their] acts or omissions do not adversely affect the health and safety of other persons'.¹⁸² The standard of 'reasonably practicable' requires that risks to health and safety be eliminated or minimised so far as is reasonably practicable.¹⁸³

3.3.3 TEQSA

The **Australian Tertiary Education Quality and Standards Agency Act 2011 (Cth)** (*TEQSA Act*) established the Tertiary Education Quality and Standards Agency (TEQSA) as an independent statutory authority that acts as a national regulator for Australian tertiary education institutions. Key objects of the Act include providing national consistency in the regulation of the higher education sector using 'a standards based quality framework' in accordance with principles of regulatory necessity, risk and proportionality, and 'requiring the provision of quality higher education'.¹⁸⁴ Under the *TEQSA Act*, all tertiary education providers must be registered¹⁸⁵ and registration requires continued compliance by tertiary education providers with Threshold Standards (see below).¹⁸⁶

TEQSA has wide enforcement powers, including revoking an education provider's registration for noncompliance on various grounds, including failing to meet the Threshold Standards.¹⁸⁷ It is also empowered to review or examine 'any aspect of an entity's operations to assess whether the higher education provider continues to meet the Threshold Standards'.¹⁸⁸

With the introduction of the *Higher Education Standards Framework (Threshold Standards) 2015* (Cth), new Threshold Standards came into effect from 1 January 2017.¹⁸⁹ Of specific interest within the context of managing sexual assault and harassment at universities are the Threshold Standards relating to the learning environment, which cover issues relating to equity and diversity, wellbeing and safety, and student grievances and complaints.¹⁹⁰ These include the requirement that

the Law (Federation Press, 2015), 192.

¹⁸⁰ *Work Health and Safety Act 2011* (Cth) s 19. See generally *ibid* 190–201.

¹⁸¹ *Ibid* s 19(3)(a).

¹⁸² *Ibid* ss 28(b), 29(b).

¹⁸³ *Ibid* s 17; see also Squelch, above n 179, 194.

¹⁸⁴ *Tertiary Education Quality and Standards Agency Act 2011* (Cth) div 2(3).

¹⁸⁵ *Ibid* pt 1, div 2(4), pt 3.

¹⁸⁶ *Ibid* s 21. Registration is valid for up to seven years, after which a provider needs to renew their registration providing that they satisfy TEQSA that they are continuing to meet the Threshold Standards: *ibid* s 36.

¹⁸⁷ *Ibid* pt 7.

¹⁸⁸ *Ibid* s 59.

¹⁸⁹ The *Higher Education Standards Framework (Threshold Standards) 2015* (Cth) was established pursuant to s 58 (1) of the *Tertiary Education Quality and Standards Agency Act 2011* (Cth).

¹⁹⁰ Threshold Standards, above n 189, Part A, s 2. See Australian Government Tertiary Education Quality and Standards Agency, *HESF Domain 2: Learning Environment* (2012) <<http://www.teqsa.gov.au/hesf-domain-2-learning-environment>>.

universities promote and foster a safe learning environment, 'including by advising students and staff on actions they can take to enhance safety and security on campus and online'.¹⁹¹ Universities are also required to advise students 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'.¹⁹² The Threshold Standards, which apply to international students¹⁹³ (other than those at private higher education providers), also require that 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'.¹⁹⁴

Further, the Threshold Standards state that students are to have access to mechanisms capable of resolving grievances about any aspect of their experience with the university,¹⁹⁵ requiring institutions to provide timely resolution of formal complaints, with the complaints processes including provisions for confidentiality, independent professional advice, advocacy and other support for both the victim and the accused.¹⁹⁶ Notably, the complaint standards require that:

*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.*¹⁹⁷

The Act states that TEQSA 'expect[s] the provider's policy and procedures to be followed where a student lodges a complaint or appeal' and that 'policies and procedures should explicitly make provision for review by an appropriate independent third party if internal processes fail to resolve any grievance'.¹⁹⁸ The Threshold Standards further require providers to demonstrate that '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'.¹⁹⁹

¹⁹¹ Ibid s 2.3(4).

¹⁹² Ibid s 2.3(1).

¹⁹³ International students are protected by TEQSA under the *Education Services for Students Act 2000* (Cth) (ESOS Act) and the National Code. See <<http://www.teqsa.gov.au/for-students#D>>. Information about support services and key aspects of a university sexual assault and harassment policy should be available in different languages. Sections of the SUNY Sexual Assault & Violence Response Resources Website, which provides students with information in relation to student rights, reporting a crime, and resources and support, is translated into a range of different languages via a simple web translation mechanism. See SUNY, above n 76. Additionally, Indian universities, such as the Indian Institute of Technology Delhi, provide their policies in both English and Hindi. See generally Indian Institute of Technology Delhi, *Anti Sexual Harassment Policy* (2011) <<http://www.iitd.ac.in/content/anti-sexual-harassment-policy>>.

¹⁹⁴ Threshold Standards, above n 189, s 2.3(3).

¹⁹⁵ Ibid s 2.4(1).

¹⁹⁶ Ibid s 2.4.

¹⁹⁷ Ibid s 2.4(4).

¹⁹⁸ Australian Government Tertiary Education Quality and Standards Agency, *Higher Education Standards Framework (Threshold Standards) 2015 – TEQSA Contextual Overview* (31 March 2016), 16 <http://www.teqsa.gov.au/sites/default/files/HESF2015TEQSACoContextualOverview310316_1.pdf>.

¹⁹⁹ Threshold Standards, above n 189, Part A s 6.2(1)(j).

3.3.4 Policy initiatives

Beyond the legislative framework, policy initiatives that broadly address the issue of sexual assault and harassment may inform the approach that universities take in responding to sexual violence. The 12-year *National Plan to Reduce Violence against Women and their Children 2010–2022* (the National Plan), developed and adopted by all Australian governments at the federal, state and territory levels in consultation with communities and organisations,²⁰⁰ envisaged the implementation of four different action plans that seek to address the impact of domestic and family violence and sexual assault on women.²⁰¹ The National Plan is currently in its third stage of implementation, with the Third Action Plan launched in October 2016 ‘sharpen[ing] the focus on sexual violence’.²⁰² Some of the key national actions to be prioritised under the Third Action Plan include ‘supporting frontline services to better recognise and respond to women and their children who have experienced sexual violence, [and] developing a national portal to assist women in the removal of intimate images that are distributed online without their consent’.²⁰³ To date, universities have not been the subject of specific focus under the National Plan framework.

The Council of Australian Governments (COAG) held a national summit in late 2016 on reducing violence against women and their children.²⁰⁴ Further steps taken to address the issue include the implementation of schools-based educational programs.²⁰⁵

Additionally, federal, state and territory governments launched a national campaign, *Violence Against Women – Let’s Stop It at the Start*, in April 2016. The campaign aims to ‘generate long-term cultural change and break the cycle of violence by encouraging adults to reflect on their attitudes, and have conversations about respect with young people’.²⁰⁶

More recently, the NSW state government announced the NSW Sexual Assault Strategy, which will provide ‘a comprehensive framework to prevent sexual assault, support victims, and hold perpetrators accountable’. As part of the development of the strategy, the NSW Minister for the

²⁰⁰ Australian Government Department of Social Services, *The National Plan to Reduce Violence Against Women and their Children 2010–2022* <https://www.dss.gov.au/sites/default/files/documents/08_2014/national_plan1.pdf>.

²⁰¹ For more information on the National Plan, see Australian Government Department of Social Services, *The National Plan to Reduce Violence against Women and their Children 2010–2022* (2 November 2016) <<https://www.dss.gov.au/women/programs-services/reducing-violence/the-national-plan-to-reduce-violence-against-women-and-their-children-2010-2022>>.

²⁰² Australian Government Department of Social Services, *Third Action Plan – National Priority Area Four* <<https://www.dss.gov.au/women/programs-services/reducing-violence/fact-sheet-national-priority-area-four-sexual-violence>>. Key initiatives established under the First Action Plan include Australia’s National Research Organisation for Women’s Safety, and 1800 RESPECT, Australia’s first national professional telephone and online counselling service for women experiencing, or at risk of, domestic and family violence and sexual assault.

²⁰³ Australian Government Department of Social Services, above n 200.

²⁰⁴ Australian Government Department of the Prime Minister and Cabinet, *COAG National Summit 2016, Reducing Violence Against Women and their Children* <<https://coagvawsummit.pmc.gov.au/>>.

²⁰⁵ See eg VicHealth, *Violence Against Women, Action in Education Settings* (20 July 2015) <<https://www.vichealth.vic.gov.au/programs-and-projects/action-in-education-settings>>; Victoria Department of Education and Early Childhood Development, *Respectful Relationships Education, Violence Prevention and Respectful Relationships Education in Victorian Secondary Schools* (November 2009) <https://www.eduweb.vic.gov.au/edulibrary/public/stuman/wellbeing/respectful_relationships/respectful-relationships.pdf>. See also Bree Cook, Fiona David and Anna Grant, ‘Sexual Violence in Australia’, *Australian Institute of Criminology*, Research and Public Policy Series No 36, 56–57.

²⁰⁶ Australian Government Department of the Prime Minister and Cabinet, Office for Women, *The National Campaign* <<https://www.dpmc.gov.au/office-women/womens-safety/national-campaign>>; Australian Government, *Respect* (2017) <<https://www.respect.gov.au/>>.

Prevention of Domestic Violence and Sexual Assault held a University Students Sexual Assault Consultation Session, which considered how universities can better respond to reports of campus sexual assault by students.²⁰⁷

In relation to university specific initiatives, Universities Australia implemented a national campaign, *Respect. Now. Always.*, in 2016 to prevent and respond to sexual assault and harassment within the sector.²⁰⁸ This national campaign has been implemented across Australian universities, with many universities adopting the *Respect. Now. Always.* slogan as part of their own initiatives to address the issue. As part of this national approach to addressing the issue within the university sector, Universities Australia provided significant financial support for the implementation across all 39 universities of the online national student survey in late 2016.

Concluding observations

There is increasing recognition both internationally and in Australia, including by universities themselves, that tertiary institutions have a duty to provide a safe and secure learning environment for their students and staff and that this duty extends to the issue of responding to and preventing sexual assault and harassment.

Countries such as the US, Canada and India have implemented specific legislation, nationally or at the state/provincial level, to address campus sexual assault and harassment. The benefit of these legislative frameworks is that they clearly specify the parameters of university obligations to respond to the issue and ensure consistency in the approach taken. Additionally, anti-discrimination and equality legislation and other general human rights and constitutional frameworks provide less defined, but still significant, foundations for university responses. The use of taskforces, with cross-sector and student representatives, has also been instrumental in fostering dialogue and helping to shape policy and procedures.

To date, the Australian legal framework has been largely untested and undeveloped in relation to enforcing universities' obligations to their students within the context of responding to sexual assault and harassment. While Australia lacks an explicit legislative framework targeting sexual assault and harassment at universities, such as that found in the US and Canada, there is scope under a duty of care and existing anti-discrimination and workplace safety laws for redress where universities fail to effectively respond to and prevent sexual violence.

TEQSA, as the national regulator for Australian tertiary education institutions, has significant potential to effect positive change in this area. Interpreted in line with the object and purpose of the *TEQSA Act*, it is suggested that the TEQSA Threshold Standards provide a framework requiring Australian universities to take a more proactive approach to addressing sexual assault and sexual harassment

²⁰⁷ Pru Goward, Minister for the Prevention of Domestic Violence and Sexual Assault, 'Minister Joins University Students for Sexual Assault Consultation Session' (Media Release, 7 June 2017) <https://www.facs.nsw.gov.au/about_us/media_releases/minister-joins-university-students-for-sexual-assault-consultation-session>. Some state governments, such as Victoria and Queensland, have developed 'respectful relationships' education programs for secondary schools as part of their violence against women prevention plans. See eg Department of Education and Early Childhood Development, State Government of Victoria, *Respectful Relationships Education* (November 2009) <<http://www.education.vic.gov.au/Documents/school/teachers/health/respectfulrel.pdf>>; Department of Communities, Child Safety and Disability Services, Queensland Government, *Safety* (22 December 2016) Women's Strategy Community Implementation Plan <<https://www.communities.qld.gov.au/gateway/womens-strategy/community-implementation-plan/priority-areas/safety>>.

²⁰⁸ See Universities Australia, above n 44.

with a failure to do so potentially giving rise to deregistration.

Alternatively, it may be necessary to amend existing, or enact new, legislation to ensure that institutional responses are strengthened. The review of comparative international frameworks above may be instructive in this process.

Comparative examples of international legislation and policy initiatives

Country	Legislative framework	Policy initiatives
Canada	<p>Province legislation:</p> <p><i>Sexual Violence and Harassment Action Plan Act (2016)</i> (Ontario)</p> <p>Human Rights Code, Ontario RSO 1990</p> <p><i>Sexual Violence and Misconduct Policy Act (2016)</i> (British Columbia)</p> <p>Sexual Violence Action Plan Bill 164 (Nova Scotia)</p>	<p>Provincial policy initiatives:</p> <p>Ontario Government Action Plan: <i>It's Never Ok: Action Plan to Stop Sexual Violence and Harassment (2015–2016)</i></p> <p>British Columbia Province Strategy: <i>Violence Free BC</i></p> <p>Nova Scotia Province Sexual Violence Strategy: <i>Breaking the Silence: A Co-ordinated Response to Sexual Violence in Nova Scotia (2015)</i></p> <p>Nova Scotia Memorandum of Understanding with Province Universities (2016)</p>
India	<p><i>The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013</i></p> <p><i>Criminal Law Amendment Act 2013 ss 354A–354D</i></p>	<p>University Grants Commission, <i>SAKSHAM: Measures for Ensuring the Safety of Women and Programs for Gender Sensitization on Campuses (2013)</i></p> <p>University Grants Commission, <i>UGC (Prevention, Prohibition and Redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institutions) Regulations, 2015 (2016)</i></p>
South Africa	<p><i>The Constitution of the Republic of South Africa (1996)</i></p>	<p>Department of Higher Education and Training Technical Task Team (2016)</p> <p>Department of Higher Education and Training Sexual and Gender Based Violence Dialogues (2017)</p>
The Netherlands	<p><i>Equal Treatment Act (2005)</i></p> <p><i>Collective Labour Agreement of Dutch Universities (2015–2016)</i></p>	
United Kingdom	<p><i>Human Rights Act 1998 (UK)</i></p> <p><i>Equality Act 2010 (UK)</i></p>	<p>Universities UK Taskforce to establish a national taskforce on violence against women, harassment and hate crime affecting students (2015)</p> <p>Universities UK Report: <i>Changing the Culture: Report of the Universities UK Taskforce Examining Violence Against Women, Harassment and Hate Crimes Affecting Students (2016)</i></p>

Country	Legislative framework	Policy initiatives
<p>United States of America</p>	<p>Federal legislation:</p> <p>Title IX of the <i>Education Amendments Act of 1972</i></p> <p><i>Clery Act</i> (2012)</p> <p><i>Campus Sexual Violence Elimination Act of 2014 (Campus SaVE Act)</i></p> <p>State based:</p> <p><i>Student Safety: Sexual Assault</i>, ch 748, California (2014)</p> <p><i>An Act to Amend the Education Law</i>, Senate Bill S5965 (2015)</p> <p>Senate Bill No 967 (New York)</p> <p><i>An Act Concerning Affirmative Consent</i>, Public Act No 16-106, California (2016)</p>	<p>Federal policy initiatives:</p> <p>Dear Colleague Letter (2011)</p> <p>National Taskforce to Protect Students from Sexual Assault, established by the White House (2014)</p> <p>National Taskforce report: <i>Not Alone, The First Report of the White House Task Force to Protect Students from Sexual Assault</i> (April 2014)</p> <p>National Taskforce Guide for University and College Presidents, Chancellors and Senior Administrators (2017)</p>
<p>Australia</p>	<p>Federal legislation:</p> <p><i>Australian Tertiary Education Quality and Standards Agency Act 2011</i> (Cth)</p> <p><i>Sex Discrimination Act 1984</i> (Cth)</p> <p><i>Work Health and Safety Act 2011</i> (Cth)</p> <p>State legislation:</p> <p><i>Crimes Act 1900</i> (NSW)</p> <p><i>Anti-Discrimination Act 1977</i> (NSW)</p> <p><i>Equal Opportunity Act 1984</i> (WA)</p> <p><i>Equal Opportunity Act 2010</i> (VIC)</p> <p><i>Discrimination Act 1991</i> (ACT)</p> <p><i>Equal Opportunity Act 1984</i> (SA)</p>	<p>Federal policy initiatives:</p> <p><i>National Plan to Reduce Violence against Women and their Children 2010–2022</i></p> <p>Council of Australian Governments national summit on reducing violence against women and their children (2016)</p> <p>National campaign: <i>Violence against Women – Let’s Stop It at the Start</i> (2016)</p> <p>Universities Australia <i>Respect. Now. Always.</i> campaign</p> <p>State policy initiatives: eg NSW Sexual Assault Strategy</p>

4. Developing good practice policies: setting institutional principles

... institutions of Higher Education can and must play a pivotal role in effectively combating the entrenched patriarchal practices/structures and mindsets and the corresponding cultures of impunity and silence that sustain them, and conspire/militate against gender justice.²⁰⁹

The larger perspective guiding sexual harassment policy is to be educational, preventive, corrective and, when punitive, to carry out processes following a complaint with sensitivity, rigour and justice.²¹⁰

The under-reporting of complaints,²¹¹ combined with the lack of prevalence data to date, has meant that Australian universities have been ill-equipped to respond appropriately to sexual assault and the complex and varied needs of student victims. A clear lesson from the findings of the national student survey and online submissions is that a deficient or misguided institutional response to the complex needs of students who are victims of sexual assault and harassment can compound their harm,²¹² potentially re-traumatising the victim or resulting in their failure to lodge a complaint.

This report seeks to develop a framework for use by Australian universities to develop and enhance policies and procedures for the prevention of sexual assault and harassment, for the investigation of allegations of such conduct, and for addressing the impact of such conduct on university students. Chapter 4 considers six principles and approaches that may usefully inform good practice policies, procedures and practices in the context of sexual assault and harassment. Chapter 5 considers the key institutional characteristics or themes, such as visible senior leadership, that will enable the effective application of these principles.

Drawing on these good practice principles and enablers, chapters 7 to 9 contain a more detailed discussion of specific initiatives that seek to address the key issues raised by the Commission's analysis of the national student survey – namely, institutional responses, student support and prevention.

²⁰⁹ University Grants Commission, above n 35, 19–20.

²¹⁰ Ibid 5.

²¹¹ See Commission's report, above n 15, chapter 6.2 for a discussion of barriers to reporting.

²¹² Ibid chapter 6.3(f)(ii)-(xii).

4.1 What is good practice?

The comparative international research that informs this report points to six factors that underlie an effective policy framework that universities should adopt in designing or revising their policies and procedures for preventing and responding to sexual assault and harassment.

4.1.1 Integrated and inclusive framework

Gender justice on campuses is clearly not an 'isolated operation' requiring quick fix solutions, but an exercise involving a perspectival shift that is able to set down norms of respect, non-discrimination and the unacceptability of any abuse of power, along with robust processes of debate, discussion and dialogue. This has to be the purpose of a new pedagogy within which issues of gender justice are seen as an integral part – not as 'women's issues' to be ghettoized or added on to academic or curricular agendas as a 'requirement' or afterthought.²¹³

Policies and procedures on sexual assault and harassment must be developed as part of a **whole-of-university commitment to addressing gender inequality**, inclusivity and diversity, discrimination and gender-based violence. The policies should both reflect this commitment across all their components (including student reporting procedures, the investigation and prosecution of complaints, support services and prevention strategies) and in their implementation.

In determining measures to ensure 'the safety of women and programs for gender sensitization on campuses', the Indian University Grant Commission highlights the need for university administrators to address 'confusion and ignorance about women's rights, questions of sexuality, interaction among peers, norms of masculinity and femininity, and an understanding of the diverse and heterogeneous composition of college and university campuses'.²¹⁴

4.1.2 Comprehensive, consistent and coordinated design and content

Fragmented, contradictory and ad hoc policies and practices can be confusing for students²¹⁵ and may exacerbate the reporting experience and resolution of complaints of sexual assault and harassment. Multiple processes for resolving complaints of sexual assault and harassment are perceived as placing a burden on students, who are asked to choose – often during a time of trauma – which path they wish to pursue. A unified process would be far superior, offering clarity for students and for the university as a whole.²¹⁶

²¹³ University Grants Commission, above n 35, 12.

²¹⁴ Ibid 4.

²¹⁵ Harvard has developed faculty-specific sexual harassment policies and one for the university as a whole. While this approach may be viable in some larger institutions, it can lead to confusion where students are enrolled in more than one faculty. See Harvard Faculty of Arts and Sciences, *Sexual and Gender-Based Harassment Policy and Procedures for the Faculty of Arts and Sciences* (13 January 2015) Harvard University <http://www.fas.harvard.edu/files/fas/files/sexual_and_gender-based_harassment_policy_and_procedures_for_the_fas_.pdf>; Harvard Law School, *Harvard Law School Sexual Harassment Resources and Procedures for Students* (18 December 2014) Harvard University <<https://hls.harvard.edu/content/uploads/2015/07/HLSTitleIXProcedures150629.pdf>>; Harvard University, *Harvard University Sexual and Gender-Based Harassment Policy* (10 February 2017) <http://titleix.harvard.edu/files/title-ix/files/harvard_sexual_harassment_policy.pdf?m=1461104544>.

²¹⁶ Stanford University, *Report of the Provost's Task Force on Sexual Assault Policies and Practices* (April 2015), 12 <https://notalone.stanford.edu/sites/default/files/provost_task_force_report.pdf>.

The project's review of the literature and empirical research indicate a preference for **stand-alone, clearly identified sexual assault and harassment policies and procedures**, rather than their being embedded in misconduct policies²¹⁷ or in a generic equity and diversity policy where sexual assault is often subsumed under broad categories of misconduct.²¹⁸ Universities in countries with legislation specifically targeting campus sexual assault and harassment, such as in the US, Canada and India,²¹⁹ tend to have stand-alone sexual assault policies. In the UK, as the issue of university sexual assault has gained prominence – particularly with the establishment of the Universities UK Taskforce examining violence against women, harassment and hate crime – some universities are moving towards the adoption of stand-alone sexual assault and harassment policies.²²⁰ Similarly, universities in South Africa, such as the University of Cape Town and the University of the Witwatersrand, have implemented stand-alone sexual assault and harassment policies with specially constituted sexual offence disciplinary panels to adjudicate complaints.²²¹

The benefit of a single stand-alone policy is that it provides a clearly identifiable and accessible document that details all the university's rules and processes for handling incidents of sexual assault and harassment,²²² allowing students direct access to the relevant procedures and an indication of the possible outcomes of an investigation.

Importantly, policies should **expressly prohibit sexual assault and sexual harassment** to reduce any ambiguity and convey a clear message about the serious nature and consequences of such conduct.

Research, including findings from the national student survey, suggests that many students do not necessarily identify harmful conduct as 'sexual assault' and/or 'harassment' due to 'the misfit between the legal definitions and social understanding'.²²³ Terms such as 'sexual assault', 'sexual

²¹⁷ University of Glasgow, *Dignity at Work & Study Policy & Procedure* (17 April 2014) <<http://www.gla.ac.uk/services/humanresources/equalitydiversity/policy/dignityatwork/>>; University of Manchester, *Dignity at Work and Study Policy* (October 2014) <<http://www.staffnet.manchester.ac.uk/equality-and-diversity/policies-and-guidance/dignity-at-work-and-study/>>.

²¹⁸ University of Manchester, *Equality and Diversity Policy* (July 2014) <<http://documents.manchester.ac.uk/display.aspx?DocID=8361>>.

²¹⁹ In Canada, the *Sexual Violence and Harassment Action Plan Act (Supporting Survivors and Challenging Sexual Violence and Harassment)* SO 2016, c 2-Bill 132, sch 3, requires all colleges and universities within Ontario to draft and implement stand-alone sexual assault policies. Similarly, Concordia University adopted a stand-alone policy on Sexual Violence in 2016: Concordia University, *Policy Regarding Sexual Violence* (20 May 2016) <<http://www.concordia.ca/content/dam/common/docs/policies/official-policies/PRVPAA-3.pdf>>. In India, universities have specific sexual harassment policies, in accordance with the UGC Regulations, with the definition of 'sexual harassment' including any unwelcome sexual advance that may create an 'intimidating or hostile academic work or living environment'. By extension, sexual assault falls within the broad sexual harassment definition. See eg Jawaharlal Nehru University, *Policy Against Sexual Harassment* (25 February 1999) <<http://www.jnu.ac.in/AboutJNU/GSCASH.asp>>. For an overview of the various approaches taken in these countries, see chapter 3 above.

²²⁰ Durham University is adopting a stand-alone Sexual Violence and Misconduct Policy to be approved by the Senate and Council and implemented for the start of the 2017/2018 Academic year: Durham University, *Sexual Violence & Misconduct: Prevention and Response, Statements and Updates* (12 June 2017) <<https://www.dur.ac.uk/sexualviolence/svmog/updates/>>.

²²¹ See University of Cape Town, *University of Cape Town Sexual Offences Policy* (18 February 2008) <http://www.sart.uct.ac.za/sites/default/files/image_tool/images/388/Get_Information/Policies/UCT%20Sexual%20Offences%20Policy.pdf>; University of the Witwatersrand, above n 158, 2.

²²² See generally White House Taskforce to Protect Students from Sexual Assault, *Checklist for Campus Sexual Misconduct Policies* (April 2014) <<https://www.justice.gov/ovw/page/file/910271/download>>.

²²³ See Commission's report, above n 15, chapter 6.2(d)(ix) regarding submissions that refer to students' lack of clarity or certainty as to whether the conduct they had experienced was sexual assault. See also Elizabeth Sheehy and Daphne Gilbert, 'Responding to Sexual Assault on Campus: What Can Canadian Universities Learn From US Law and Policy?' in Elizabeth Quinlan, Andrea Quinlan, Curtis Fogel and Gail Taylor (eds), *Sexual Assault on Canadian University and College Campuses* (Wilfrid Laurier University Press, 2017) forthcoming; Valls et al, above n 32, 1529.

misconduct', 'sexual violence', 'gendered violence', 'sexual misconduct' and 'gendered misconduct' are often used interchangeably to cover a range of behaviour.

The **definitions** of sexual assault and harassment in university policies, codes of conduct, and other related material, including student support information, should reflect definitions contained in local laws and criminal codes.²²⁴ In addition, definitions must be clear and concise, allowing students to establish that certain unacceptable conduct corresponds with a definition within their university policies and codes of conduct. In recognising that 'there are divergent perceptions of what constitutes sexual harassment', the sexual harassment policy of Stellenbosch University includes a comprehensive list of prohibited behaviour, including verbal, non-verbal, visual, physical and 'quid pro quo' forms of conduct, such as sexual bribery and sexual extortion.²²⁵

Various university policies, including those of Columbia University, Concordia University (Canada), Stellenbosch University and the University of Oxford (UK), provide illustrative scenarios to supplement their definitions of proscribed behaviour.²²⁶ Where illustrations are employed, they should reflect the diversity of the student population and the fact that victims of sexual assault and harassment are not limited to particular groups, such as women.

The policies should also contain definitions and explanations covering key concepts, such as consent,²²⁷ the standard of proof used in disciplinary hearings, and the scope of application of the policies,²²⁸ expressly stating that the policy applies to online and mobile phone communications.

Consistency of definitions throughout a policy and across all related policies will minimise confusion and reinforce the prohibition. The principle of consistency has been applied by Canadian universities in particular provinces with the adoption of similar sexual assault and harassment definitions across

²²⁴ The University of Kansas provides a comprehensive list of definitions for terms used in all university policies and procedures: University of Kansas, *Definitions* <<https://studentaffairs.ku.edu/definitions>>. See also McGill University, above n 82.

²²⁵ Stellenbosch University's Sexual Harassment policy covers a broad spectrum of 'unwanted behavior', which includes:

- (i) **Verbal forms** such as unwelcome enquiries regarding a person's sex life, telephone calls with a sexual undertone, continuous rude or sexist jokes/remarks, unwelcome requests for dates, remarks about a person's figure, etc, (ii) **Non-verbal forms** such as gestures with a sexual meaning, leering, continuous unwelcome flirtation, etc, (iii) **Visual forms** such as exhibiting pornographic photos, comics, objects, etc. that create a hostile environment, (iv) **Physical forms** such as unwelcome contact through patting, pinching, fondling, kissing, pawing, assault, molesting and rape and (v) **Quid pro quo forms** such as sexual bribery (eg. promising a promotion in return for granting sexual favours) and sexual extortion (eg. refusal to promote an individual if he/she does not consent to granting sexual favours).

Stellenbosch University, above n 159, 1.

Conduct prohibited at Oxford, Stanford, Harvard, Columbia and the London School of Economics includes: relationship violence; stalking; failure to comply with a university or court order relating to sexual misconduct; sexual harassment via electronic or social media; harassment on the grounds of sex, sexual orientation and other unlawful grounds; publishing or displaying sexist, racist, homophobic, transphobic or otherwise offensive materials; and retaliation against persons who make a complaint of any of these forms of misconduct: Columbia University, *Gender-Based Misconduct Policy for Students* (13 February 2017), 4–6 <<http://www.columbia.edu/cu/studentconduct/documents/GBMPolicyandProceduresforStudents.pdf>>; Harvard University, above n 215; London School of Economics, *Anti-Bullying and Anti-Harassment Policy* (17 May 2016) <<http://www.lse.ac.uk/intranet/LSEServices/policies/pdfs/school/harPol.pdf>>; Stanford University, *Prohibited Sexual Conduct: Sexual Misconduct, Sexual Assault, Stalking, Relationship Violence, Violation of University or Court Directives, Student-on-Student Sexual Harassment and Retaliation* (11 March 2016) <<https://adminguide.stanford.edu/chapter-1/subchapter-7/policy-1-7-3>>; University of Oxford, *University Policy and Procedure on Harassment* (1 December 2014) <<https://www.admin.ox.ac.uk/eop/harassmentadvice/policyandprocedure/>>.

²²⁶ See Columbia University, above n 225, 6–7; Concordia University, above n 219, 2–3.

²²⁷ For examples of detailed definitions, including consent, see eg Harvard University, above n 215; University of Kansas, above n 224; University of Manchester, *Policy and Procedures for Sexual Misconduct* (24 March 2015) <<https://www.manchester.edu/docs/default-source/default-document-library/manchestertitleixpolicy3-24-15.pdf?sfvrsn=2>>.

²²⁸ RMIT provides clear definitions with illustrative non-exhaustive examples to explain sexual harassment: RMIT University, above n 78.

various universities.²²⁹

The language employed in university policies on sexual assault and harassment should be **sensitively framed and culturally and socially appropriate**, recognising the needs of different student cohorts, including Aboriginal and Torres Strait Islander students, CALD and international students, students with disability, and students who are LGBTIQ. The availability of policies in **different languages** is essential to their accessibility, comprehension and use, particularly by international students.²³⁰

Sexual assault and harassment policies and procedures should be designed to **cross-refer** to, or integrate, provisions of related university policies, such as those within occupational health and safety laws or regulations, residential college policies, and student services policies.²³¹ Consistency of language, definitions and corresponding provisions across the applicable range of university policies, eliminates confusion and uncertainty and ensures that the objectives and application of sexual assault and harassment policies and procedures are reinforced, rather than negated, by other university policies.

Finally, to address concerns about the fragmentation of policies and procedures on sexual assault and harassment, universities – depending on their size and resources – may be better served by establishing a **position or special unit²³² that is responsible for coordinating and managing all**

²²⁹ In Ontario, the *Sexual Violence and Harassment Action Plan Act (Supporting Survivors and Challenging Sexual Violence and Harassment)* SO 2016, c 2-Bill 132 s 17 defines sexual violence as:

[A]ny sexual act or act targeting a person's sexuality, gender identity or gender expression, whether the act is physical or psychological in nature, that is committed, threatened or attempted against a person without the person's consent, and includes sexual assault, sexual harassment, stalking, indecent exposure, voyeurism and sexual exploitation.

This same definition appears in University of Toronto, above n 76; University of Ottawa, *Policy 67b on the Prevention of Sexual Violence* (2016) <<https://www.uottawa.ca/administration-and-governance/policy-67b-prevention-sexual-violence>>. See also Ryerson University, *Sexual Violence Policy* (June 2015) <<http://www.ryerson.ca/policies/board/sexualviolencepolicy/>>; Trent University, *Sexual Violence Prevention and Response* (29 January 2016) <<https://www.trentu.ca/administration/pdfs/SexualViolencePolicy-App29Jan2016.pdf>>.

²³⁰ Policies (or key aspects of a policy and procedure) should be available in different languages. The State University of New York (SUNY) Sexual Assault & Violence Response resources website provides students with information to seek resources and support, and to report a crime to law enforcement and the university. A key section of the website on student rights and reporting is translated into a range of different languages via a simple web translation mechanism. See State University of New York, above n 77. Additionally, Dutch and Indian universities routinely provide their policies in both the national language and English. See eg the Indian Institute of Technology Delhi, above n 193.

²³¹ For example, student services policies should include sexual assault or harassment as a clear reason for special consideration applications, and as a basis for prioritising victims of sexual assault or harassment in securing alternative accommodation or changes in class or course attendance to avoid or minimise the proximity of an alleged perpetrator to the victim.

²³² Professionally trained and experienced staff at Stanford University's Office of Sexual Assault & Relationship Abuse address all matters related to sexual assault/misconduct, dating/domestic violence, and stalking. Stanford's Confidential Support Team (CST) provides:

[C]onfidential support to Stanford students impacted by sexual assault and relationship violence, including domestic abuse, intimate partner abuse, stalking, and sexual or gender-based harassment. CST services include brief emotional support and ongoing individual counselling. The CST also provides information about your rights and reporting options, as well as support throughout the reporting process if pursued. These appointments are intended to provide confidential support for students who have experienced sexual/relationship violence as well as for those who have questions about how to help a survivor of sexual/relationship violence. The CST is staffed by a licensed psychologist and licensed clinical social worker. There is no charge for Stanford students.

Vaden Health Centre, *Sexual Assault*, Stanford University <<https://vaden.stanford.edu/get-help-now/sexual-assault>>. Similarly, although on a much smaller scale, Durham University is the first university in the UK to create the dedicated position of Sexual Violence and Misconduct Student Support and Training Officer. This position is primarily responsible for policy development, case management, student support, and prevention and training. Email from Durham University Student Support and Training Officer to Kirsten Keith, 19 April 2017. See also Isobel Morrow, 'Finally, Durham Has an Officer Specifically for Sexual Assault', *The Tab*, 23 December 2016 <<http://thetab.com/uk/durham/2016/12/23/durham-first-university-permanent-student-support-officer-sexual-violence-misconduct-33140>>.

aspects of sexual assault and harassment. The function of a specific position or unit would include disseminating information and providing training (for example, of individuals who are likely to receive initial disclosures of sexual assault and harassment, namely ‘first responders’), recording complaints, tracking investigations and disciplinary hearings, assisting with therapeutic referrals and student academic needs, and monitoring the implementation and regular review of policies.

4.1.3 Accessible, transparent and enforceable processes

*It took me months to report the incident at my university, as I had no idea where to go in spite of having studied there for six years.*²³³

Significant findings of the Commission’s report in relation to barriers to reporting incidents of sexual assault and harassment include a lack of student awareness of reporting mechanisms and procedures.²³⁴ The Commission’s report notes that the majority of respondents (62%) stated that they ‘had little to no knowledge about where to’ formally report an incident of sexual assault, with a similar percentage in relation to incidents of sexual harassment.²³⁵ The report further indicates that international students were more likely to state that they did not know to whom they should report, or where to go to make such a report at university.²³⁶ The report also highlighted that the majority of students had ‘little or no knowledge’ about their university’s policies on sexual assault (54%) or harassment (52%).²³⁷ The online submissions supported these findings and also provided other reasons for not reporting incidents of sexual assault or harassment,²³⁸ including a perception among students that the universities would fail to take any action in response, or constrain or prevent the behaviour.²³⁹

Accessibility refers to the clarity (intelligibility) of the policies, their availability and their prominence. University adherence to a transparent and accountable process requires that sexual assault and harassment policies and procedures should be **publicly accessible** on university websites, as a demonstration of institutional commitment to address and prevent such conduct to both current and future students, as well as the broader community, including parents and alumni.

To maximise the **transparency** of policies, procedures and general information relating to sexual assault and harassment, they must be well publicised and disseminated, easily identifiable, and easy to comprehend via a dedicated university webpage.²⁴⁰ Importantly, all policies should contain

²³³ Commission’s report, above n 15, chapter 6.2(d)(xi); Submission No 1103.

²³⁴ Ibid chapter 8.3(a).

²³⁵ Ibid chapter 6.2(c).

²³⁶ Ibid chapter 6.2(d)(xi) and (xiv).

²³⁷ Ibid 6.2(c).

²³⁸ Ibid 6.2(d).

²³⁹ Ibid 6.2(xii).

²⁴⁰ Many Australian universities have updated their webpages to make the information more centralised and accessible, particularly following campus screenings of *The Hunting Ground*. For examples of accessible information, see eg La Trobe University, *Speak Up* (2017) <<http://www.latrobe.edu.au/students/wellbeing/respect/speak-up>>; UNSW Sydney, *Sexual Assault, Sexual Harassment & Rape* (6 June 2017) <<https://student.unsw.edu.au/harassment>>; Victoria University, *Sexual Offences* (2017) <<https://www.vu.edu>>.

clear information directing students to internal and external support services, including police sexual assault units, and other useful links – for example, on affirmative consent or bystander protection.²⁴¹

Increased transparency and accessibility alone, however, will not improve student perception – as documented in the Commission’s report – that universities fail to act on reports of sexual assault or harassment.²⁴² As one student recalled, ‘I didn’t report the incident ... I was in a position to know of other allegations and also to know that the university did nothing about them’.²⁴³ If universities genuinely seek to strengthen their responses to sexual assault and harassment, they must not only establish appropriate policies and procedures, but also ensure that these are routinely and **robustly enforced and subject to regular review** to ensure their continued effectiveness. Failure to do so will create or reinforce an impression that the university is weak on addressing sexual assault or harassment.

The consistent application of policies across universities and their colleges, the robust nature of internal investigations, and the **expeditious determination of complaints** are further markers of the reliability of procedures directed at the fair, effective and appropriate resolution of complaints of sexual assault and harassment.

4.1.4 Resourced, interconnected and responsive support services

As the online submissions to the Commission reveal, the trauma and disruption experienced by student victims of sexual assault and harassment,²⁴⁴ and the vicarious trauma potentially experienced by first responders and bystanders, can be significant and enduring. The impact on students affects not only their physical and emotional wellbeing, but also their ability to meet academic requirements and participate in university and community life.²⁴⁵

Recognition of this impact requires the provision of **victim-centred support services** that are delivered at an appropriately located site in a sensitive manner by experts who are **responsive to the distinct needs of different student cohorts**, including Aboriginal and Torres Strait Islander students, CALD and international students, students with disability, and students who are LGBTIQ. These needs may include the option to provide an initial account of a sexual assault in writing (if for

au/about-vu/facilities-services/safety-security/safer-community/concerning-threatening-or-inappropriate-behaviour/sexual-offences>.
For further information of efforts undertaken by Australian universities to make information more accessible, see The Hunting Ground Australia Project, above n 16.

²⁴¹ US research shows that although many universities have policies addressing the issue, many failed to provide additional information covering topics such as affirmative consent and victim blaming. The research suggests that universities consider providing ‘more comprehensive, organised, useful, and user-friendly information on sexual assault prevention and intervention’ with input from expert practitioners: Emily Lund and Katie Thomas, ‘Necessary but Not Sufficient: Sexual Assault Information on College and University Websites’ (2015) 39(4) *Psychology of Women Quarterly* 530, 530.

²⁴² Commission’s report, above n 15, chapter 6.2(d)(xii).

²⁴³ Ibid Submission No 136.

²⁴⁴ Commission’s report, above n 15, chapter 4 which covers the impact of sexual assault and harassment on a student’s mental health, their studies and career progression, and their social life.

²⁴⁵ Ibid. The White House Task Force to Protect Students from Sexual Assault recommends that universities:

[p]rovide resources and accommodations to support a survivor after an assault, including access and referrals to: a victim advocate; emergency medical services, including the option for a medical forensic examination; law enforcement; mental health services; transportation to and from services (if the survivor does not have ready access to such services); housing accommodations, if the survivor would like to change living arrangements or location; educational accommodations, such as taking classes remotely, retaking classes, or taking a leave of absence; and other reasonable accommodations and support services as requested by the survivor.

White House Task Force to Protect Students from Sexual Assault, above n 122, 12.

example, the victim's first language is not English) and reassurance that the service is inclusive (by, for example, displaying a visible statement or symbol of non-discrimination on the service website or at its premises).

In addition, given the range of student needs that might require therapeutic and academic intervention, **support services should be operationally integrated and coordinated** where possible and linked to student administrators or student services²⁴⁶ to allow more effective overall management of student needs.

Critically, the development of responsive support services requires **sufficient resources** to support initial and ongoing training of staff, adequate staffing levels, and development, translation and dissemination of information and referral resources for students.²⁴⁷ Currently, few university services required by victims of sexual assault or harassment are available on a 24-hour cycle. At minimum, a well-publicised 24-hour university telephone service should be available with appropriately trained personnel who can refer victims to nearby police, forensic, medical or counselling services.

4.1.5 Collaborative links with external sexual assault services

Given that universities are not set up to fully investigate and adjudicate cases of sexual assault, collaboration and coordination with relevant external agencies – including local police sexual offences units, sexual assault units at local hospitals, domestic violence and sexual assault services, and women's legal centres – can serve to improve and expedite management of these cases, share valuable resources, and build information.

In addition, with many cases of student sexual assault occurring off-campus, and a preference among students for seeking off-campus medical and trauma treatment,²⁴⁸ coordination and collaboration with these agencies is beneficial for follow-up investigations regarding factual circumstances, details of the alleged perpetrator, therapeutic care and referral needs, and recording and reporting of data.²⁴⁹ External services can also provide useful information for the development of prevention strategies.

²⁴⁶ In 2013, parents of American university students concerned about the high rate of sexual assault on college campuses and the lack of comprehensive resources for survivors, students, administrators and parents trying to respond to and prevent incidents of campus sexual assault, founded Culture of Respect. They brought together a team of public health and violence prevention researchers from New York University and Columbia University and experts in the fields of research, prevention education, health support, legal issues, violence prevention, higher education policy, outreach, advocacy, and campus activism to develop a framework for improving institutional efforts to address sexual violence. In 2016, Culture of Respect became part of Student Affairs Administrators in Higher Education (NASPA), which facilitated the dissemination of its programs and initiatives to a large number of institutions and students. See Culture of Respect (2016) <<https://cultureofrespect.org>>.

²⁴⁷ The President of Oregon State University has committed the university to increasing its efforts to tackle issues of sexual assault and harassment by recruiting additional support staff, providing a dedicated advocacy centre that provides confidential support and information to victims, and offering 24/7 support services. See Oregon State University, *Sexual Violence Prevention – Next Steps* (2017) <<http://leadership.oregonstate.edu/president/sexual-violence-prevention-next-steps>>.

²⁴⁸ Commission's report, above n 15, chapter 6.1(c) states: 'Students who were sexually assaulted or sexually harassed were more likely to seek support from outside of their university than from within the university, particularly from a mental health professional.'

²⁴⁹ The University of Cape Town Sexual Assault Response Team (SART) is a survivor-centred, collaborative and multidisciplinary team that is 'open to accommodating the voices of all who are affected by sexual violence on campus' and 'is designed to empower the university community with the knowledge and skills to effectively respond to and prevent sexual violence on campus'. See Duma, above n 88, 1.

4.1.6 Institutional commitment to prevention framework

The Task Force has been mindful of the 'normative' and educative role that colleges and Universities need to play to transform consciousness (without relying excessively or exclusively on 'punitive' processes) to combat gender-based discrimination on campuses.²⁵⁰

While thoughtful, rigorous and comprehensive sexual assault and harassment policies can delineate and prohibit certain conduct and seek to reduce and prevent harmful consequences, their effectiveness depends on their implementation, on the environment in which these policies are developed, and on the objectives that inform their design.

The existence of an embedded **institutional program directed at prevention** of sexual assault and harassment²⁵¹ is essential to the validity of any good practice policy framework. It can provide a foundational charter in line with an institution's stated policies on gender equality and indicate what measures and strategies will be implemented to prevent harmful (and unlawful) practices. These can include **remedial** (counselling, medical and legal services) and **environmental prevention measures**, such as increased or improved lighting, security checkpoints, buttons and patrols, closed circuit television, and card-only access to residential colleges. The creation of **bystander intervention programs**²⁵² can also serve to demonstrate institutional support for prevention measures, which may shift attitudes and behaviour and have an impact on university culture. These measures are further explored in chapter 9.

Concluding observations

Comparative international research reveals a number of common features or principles that underlie good practice university responses to addressing issues of sexual assault and sexual harassment. It is recommended that Australian universities apply these principles when devising their policy frameworks for responding to campus sexual violence.

Policies directed at responding to complaints of sexual assault and harassment should be part of a **broad institutional framework** that addresses the underlying causes of sexual violence, such as gender inequality and gender-based discrimination. The policies should be **comprehensive and consistent** in relation to design or structure and content, and should be **culturally and socially**

²⁵⁰ University Grants Commission, above n 35, x.

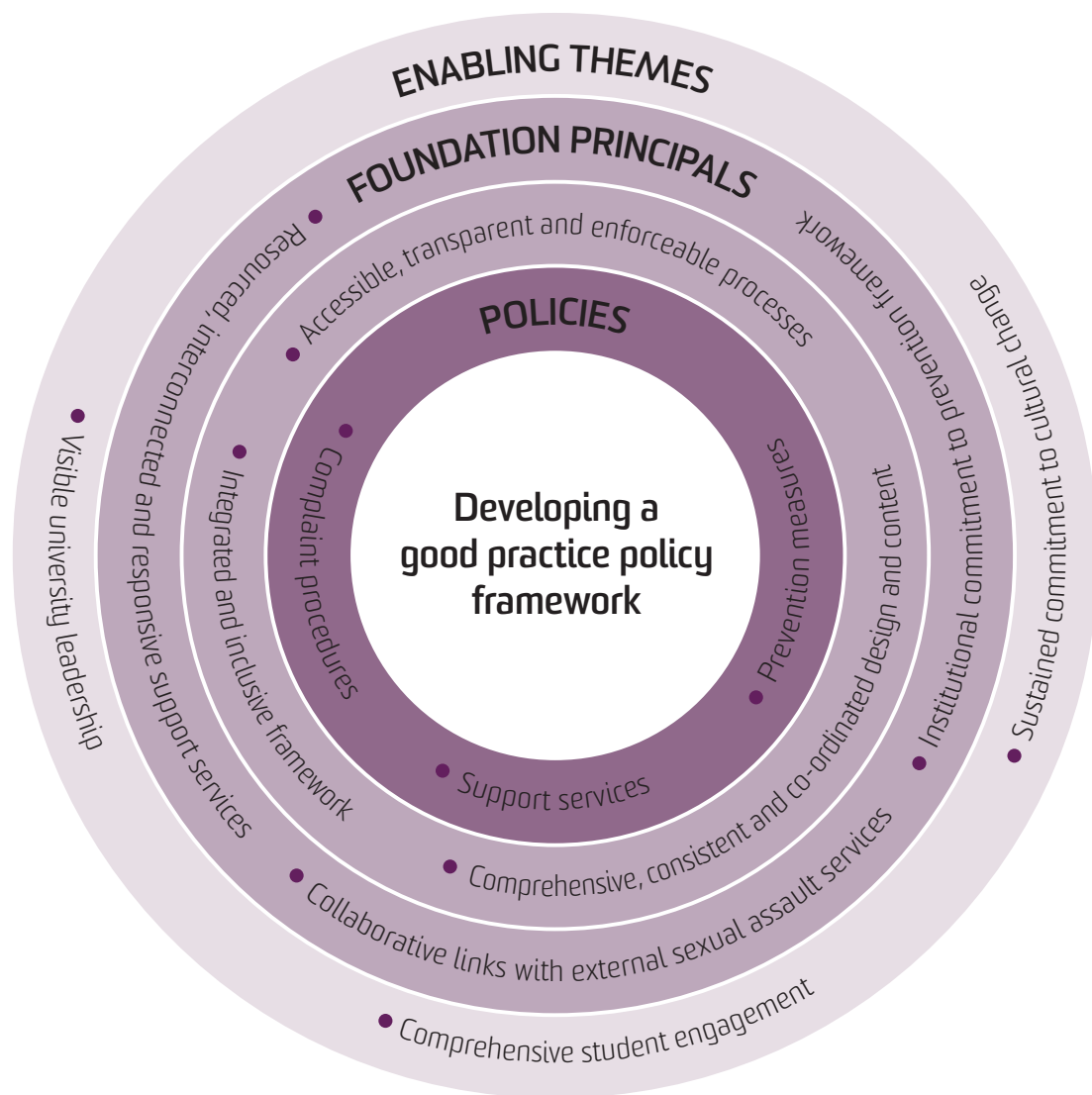
²⁵¹ Victoria University (Australia) has implemented a three-year Preventing Violence Against Women Ten Point Plan (2016–2019), which focuses on 'taking responsibility' to implement multiple strategies and actions to address 'the root causes of violence against women' and to respond and prevent its manifestations. See Victoria University, *Respect and Responsibility, Preventing Violence Against Women, Ten Point Plan, 2016–2019* <<https://www.vu.edu.au/sites/default/files/student-services/pdfs/preventing-violence-against-women-ten-point-plan.pdf>>. See also the University of Iowa Six Point Plan to Combat Sexual Assault implemented in 2014. Updates about the progress in meeting the plan's stated objectives are regularly provided on the university website: The University of Iowa, *Six Point Plan to Combat Sexual Assault* (5 April 2016) <<https://president.uiowa.edu/six-point-plan>>.

²⁵² On arrival, new students at the Fitchburg State University, Massachusetts, are 'required to participate in a Bystander Intervention Program to learn practical strategies for safely stepping in when they think someone might be in danger. Sponsored by FAVE – Fitchburg Anti-Violence Education – the program also includes a presentation of *Drawing the Shades*, a student-directed play relating the experiences of sexual assault survivors. If students don't attend the sessions, a hold is placed on their account to prevent them from registering for the next semester until the requirement is completed'. See Karen Doss Bowman, 'Combatting Sexual Violence on Campus', *Public Purpose*, Winter 2015 <<http://www.aascu.org/MAP/PublicPurpose/2015/Winter/SexualAssaultonCampus.pdf>>.

appropriate. In addition, policies must be **accessible and transparent** to the students who will potentially use them and **rigorously enforced** by senior members of university staff with relevant authority and expertise. The reliability of policies to deliver procedural and substantive resolution is critical to student usage of a sexual assault and harassment policy and procedure.

A university sexual assault and harassment policy framework should endorse **collaborative partnerships with external agencies** that might offer significant assistance in enhancing the management of cases of sexual assault and harassment and may also supplement internal support services. Central to any comprehensive framework is the provision of sensitively delivered and effective **redress for victims of sexual violence.** The **comprehensive resourcing** of student support services and of prevention strategies and mechanisms is a key feature of a good practice policy framework.

Developing a good practice policy framework: institutional principles and enabling themes



5. Enabling the effective implementation of sexual assault and harassment policies: primary themes

The previous chapter outlines six key principles that comparative research suggests are necessary for the formulation or enhancement of university policies on sexual assault and harassment. The existence of good practice policies alone is, however, insufficient for their effective and beneficial application. This section highlights three characteristics or themes that are essential enablers for the optimum operation of good practice policies, namely: visible university leadership, comprehensive student engagement, and sustained commitment to cultural change.

5.1 Visible university leadership

*As leaders in higher education, we have a responsibility to create a cultural shift in our attitudes and perceptions and behaviors. We need to prevent sexual violence from occurring in the first place. We shouldn't look at it just as a legal requirement – it's a human issue. We know that both women and men are victims all over the world, so why can't we be leaders in changing those dysfunctional, violent behaviors we shouldn't tolerate in any form?*²⁵³

Institutional responses to sexual assault and harassment are more likely to be viewed as credible by the student body and the university community if senior university management actively develops, promotes and enforces policies directed at securing perpetrators, addressing the needs of victims, and leading the 'cultural shift' required to change harmful attitudes and behaviours. The success of any policy requires campus leadership 'to provide appropriate ethical standards and ... suitable internal procedures to secure their observance'.²⁵⁴

The legitimacy of these policies and university responses is further enhanced where they are perceived as realistic and substantial. Responses that assert 'zero tolerance' where institutional practice may undermine such claims, or calls for the creation of 'safe campuses' where the institutional response, not the physical environment, is the origin of student disquiet, are unlikely to attract student confidence.

Rather, active university identification, ownership and rectification of the problem of sexual assault

²⁵³ Dianne Harrison, President, California State University, quoted in Bowman, above n 252, 7.

²⁵⁴ American Association of University Professors, Committee on Women in the Academic Profession, above n 60.

and harassment are strong indicators of leadership. This can be illustrated by dissemination of a university's position and commitment across all university units, agencies and faculties; rigorous enforcement of policies and procedures; and the provision of adequate and sustainable resources, including staffing, training and support services to rectify and prevent harmful conduct.²⁵⁵

The enforcement and reviewability of policies and procedures are key measures of leadership. They indicate institutional commitment to the rigorous application of the policies and an awareness that policies require regular evaluation and revision if they are to continue to give effect to their core objectives.

Leadership in relation to the internal management of cases of student sexual assault and harassment resides with all elements of university operations. The manner in which these incidents are managed at a public level is of critical significance to any investigation and associated disciplinary or criminal proceedings, as is the formulation and dissemination of outcomes, and – most importantly – the protection and wellbeing of the victim and bystanders, and the rights of the alleged perpetrator. University communications and media officers can play a crucial role in this regard in developing considered responses and reports for public release and in ensuring effective and appropriate contributions to public debate on the issue.

A simple example of university leadership on an individual level is the establishment of high-level university working groups with cross-institution representation²⁵⁶ tasked with designing and overseeing the implementation of an institutional strategy or framework for responding to and preventing sexual assault and harassment.

Leadership could also be demonstrated on a sector-wide level– for example, through the establishment of university-led national taskforces. This approach has been adopted in several countries to specifically examine sexual violence affecting university students. For example, the Universities UK Taskforce, with members drawn from various universities and student representatives,²⁵⁷ India's University Grants Commission Task Force,²⁵⁸ and South Africa's Department of Higher Education Training Technical Task Team in partnership with multiple agencies and stakeholders.²⁵⁹ Australia's TEQSA could conceivably establish such a standing working party in accordance with its role to evaluate compliance by registered higher education providers with standards, such as wellbeing and safety, contained in the *Higher Education Standards Framework*

²⁵⁵ In November 2016, the Vice-Chancellor and Principal Professor Adam Habib of the University of the Witwatersrand (South Africa) defended the release of a confidential report on an incident of a rape involving two students at the university. In his statement, he commented:

I do think that there needs to be accountability to the University community, especially to the individuals involved in this incident and the activists who have insisted that it be brought to the attention of all. I therefore believe that it is prudent to inform you of the substance of this report.

See Adam Habib, *Gasa Report Feedback* (23 November 2016) <<https://www.wits.ac.za/news/latest-news/general-news/2016/2016-11/gasa-report-feedback.html>>.

²⁵⁶ See for instance: Durham University Sexual Violence Taskforce, Stanford Taskforce, Harvard Taskforce, and University of Ottawa Taskforce on Respect and Equality.

²⁵⁷ Universities UK, above n 32.

²⁵⁸ See generally University Grants Commission <<http://www.ugc.ac.in/>>.

²⁵⁹ South African Government, 'Higher Education and Training Appoints Task Team to Address Sexual and Gender Based Violence in Higher Education Institutions' (Media Statement, 6 October 2016) <<http://www.gov.za/speeches/higher-education-and-training-appoints-task-team-address-sexual-and-gender-based-violence>>.

(*Thresholds Standards*) 2015.²⁶⁰

The establishment of a standing cross-university working party might also serve to maintain a national tertiary sector focus on the issue; ensure consistency of policies, procedures and practices; and facilitate the exchange of good practice strategies and prevention training initiatives. The Indian University Grants Commission Task Force, established in 2013, undertook to share its recommendations 'with all sections of the university community so that all members of higher education institutions can live, work and study without fear of harassment and violence, in an atmosphere of equality and dignity'.²⁶¹

5.2 Comprehensive student engagement

*Why are students so important? You are on the ground. You or someone close to you may have experienced sexual assault. You see where the gaps in understanding exist when it comes to consent, policies, awareness, and resources. You know what will engage students on campus.*²⁶²

In speaking to students as part of the UNSW Case Study project, and in conversations with NUS leadership, women's officers, and student representatives from residential colleges, the project identified that one of the reasons for students not reporting incidents of sexual assault or harassment is that the policies, procedures and services devised for victims of harm fail to speak to the varied and complex needs of students from different cultural and social groups.²⁶³ These issues were also reflected in the NUS *Talk About It* surveys and the EROC Australia submission to the Commission.²⁶⁴ The Commission's report highlights barriers to reporting that confront international students, including the lack of support networks tailored to the needs of international students and concerns about the impact of making a report on their visas.²⁶⁵ In other examples, the Commission's report considers the reporting difficulties facing LGBTIQ students. As one student stated: "I wanted to report the sexual assault but knew that as a trans woman reporting sexual assault by another queer woman would just be a humiliating and traumatising experience that would go nowhere."²⁶⁶

Institutional responses that suggest a template or 'one-size-fits-all' approach risk being dismissed as unresponsive and insensitive if they ignore the needs and perspectives of distinct student population groups, including Aboriginal and Torres Strait Islander students, CALD and international students, students with disability, and students who are LGBTIQ.

²⁶⁰ Australian Government Tertiary Education Quality and Standards Agency, above n 190.

²⁶¹ University Grants Commission, above n 35, viii.

²⁶² Audrey Logan, 'The Student Voice in Sexual Assault Awareness Month', *Culture of Respect*, March 2015 <<https://cultureofrespect.org/sexual-assault-awareness-month/>>.

²⁶³ Cama and Durbach, above n 17

²⁶⁴ NUS (2015), above n 5; NUS (2011), above n 5; EROC Australia, above n 84.

²⁶⁵ Commission's report, above n 15, chapter 6.2(d)(xiv).

²⁶⁶ Ibid 6.2(d)(vi), Submission No 1632. A further submission underscored the need for information and training about same-sex relationships and sexual violence to challenge assumptions: "Maybe there should be some information about queer relationships and how they can still be inappropriate. Just because someone is queer, doesn't mean that their boundaries shouldn't be respected": Submission No. 97.

Engaging students in an ongoing process of how best to adapt policies and services to reflect the reasonable needs of a varied student population can facilitate enhanced accessibility and use of the policies and services. University student services can benefit considerably from consulting with students – particularly those who bring a perspective that may differ from an institution’s primary cultural and social norms. Regular consultations with students can also highlight deficiencies in student services and the need for resources to effectively redress the physical, psychological and social harm induced by sexual assault and harassment.

The importance of student engagement and consultation is reflected in some Canadian provincial legislation that requires universities to include student input as part of the process of drafting and revising policies.²⁶⁷ The Universities UK Taskforce’s *Changing the Culture* report reflects a similar view, with the recognition that ‘involvement from the students’ union is essential in developing and implementing a university-wide response’.²⁶⁸ The University of Iowa has established the President’s Student Advisory Committee on Sexual Misconduct, which advises the university on ‘the impact of policies and practices related to the prevention of and response to sexual misconduct affecting students; solicits input from a broad range of students to inform the committee’s advice to the president; and monitors progress on university plans and commitments in the domain of sexual misconduct’.²⁶⁹

The inclusion of student representatives on high-level university working groups on sexual assault and harassment and on sexual violence prevention committees, as trainers on reporting procedures and prevention strategies, and as speakers in university forums on changing cultural attitudes, is a demonstration of university collaboration with its key stakeholders. It is also a recognition of student leadership as a primary contributor (over many decades) to addressing and preventing university sexual assault and harassment, developing solutions, and guiding universities towards a more proactive rather than a reactionary approach.²⁷⁰

5.3 Sustained commitment to cultural change

*Higher education institutions are not spaces removed from dominant cultural attitudes about sexual violence, and so it is no tremendous surprise that just as sexual violence is an epidemic outside of the gates of higher education, so too is it a crisis within.*²⁷¹

Despite the many significant and constructive efforts by Australian universities to address and prevent campus sexual assault and harassment,²⁷² the Commission’s report indicates that

²⁶⁷ See eg *Sexual Violence and Harassment Action Plan Act (Supporting Survivors and Challenging Sexual Violence and Harassment)* SO 2016, c 2-Bill 132, sch 3, cl 4.

²⁶⁸ Universities UK, above n 32, 51.

²⁶⁹ The University of Iowa, *Student Advisory Committee on Sexual Misconduct* <<https://diversity.uiowa.edu/committee/student-advisory-committee-sexual-misconduct>>.

²⁷⁰ Section 17(4) of the *Sexual Violence and Harassment Action Plan Act (Supporting Survivors and Challenging Sexual Violence and Harassment)* SO 2016, c 2-Bill 132, specifically headed ‘Student input’, requires a college or university to consider ‘student input ... in the development of its sexual violence policy and every time the policy is reviewed or amended’.

²⁷¹ Sara Carrigan Wooten and Roland W Mitchell, *The Crisis of Campus Sexual Violence: Critical Perspectives on Prevention and Response* (Routledge, 2015) ix.

²⁷² See further various initiatives undertaken by universities referred to in The Hunting Ground Australia Project, above n 16. See also

prevalence figures are high²⁷³ and that students face 'structural and attitudinal' barriers to 'reporting or seeking support following sexual assault or sexual harassment. In addition, students who did report were often unsatisfied with the response of their university.'²⁷⁴ While the recent increased focus on university sexual assault and harassment has triggered important initiatives and strategies to manage, redress and prevent university sexual violence, these have primarily been directed at a remedial rather than a transformative approach.

Entrenched cultural attitudes and practices are reflected in student experiences recounted throughout the Commission's report.²⁷⁵ The transformation of attitudes and practices – those that seek to hold the victim responsible for a sexual assault, that suggest that victims take steps to protect themselves against potential assaults and/or initiate attempts at resolution with an alleged perpetrator, or that view the presence of alcohol or drugs as the basis for dismissing an investigation – requires ongoing, rigorous investigation about what strategies can contribute to effective prevention.

Many university initiatives that ostensibly advocate an objective that is directed at the cultural change necessary to prevent university sexual violence often have short life-spans and may simply be targeted at addressing one-off, specific incidents. Fundamental and enduring change that brings about a significant reduction in denigrating and coercive behaviour in university environments requires research into, and the implementation of, well-evaluated programs and strategies that can demonstrate behavioural and attitudinal change.

If these programs are to 'create a cultural shift in our attitudes and perceptions and behaviors',²⁷⁶ they must be embedded in university operational frameworks, properly resourced, and socially and culturally relevant. Importantly, they need to be underpinned by a clear institutional commitment that these programs be conducted over multiple periods rather than in single sessions, be led by appropriately trained staff, and be implemented each year to cover new student intakes and changes in university leadership and staff.

Concluding observations

The environment in which sexual assault and harassment policies and procedures are formulated and implemented is crucial to their utility and long-term effectiveness.

The vocal **commitment of senior university leadership** to create a learning environment that supports the physical, emotional and academic wellbeing of staff and students, and to give visibility to conduct that undermines that objective, will make a significant contribution not only to

Universities Australia, above n 44.

²⁷³ Commission's report, above n 15, chapter 2.1: 'One in two students was sexually harassed on at least one occasion in 2016. Around half of this harassment occurred in a university setting. ... Overall, 6.9% of students were sexually assaulted on at least one occasion in 2015 or 2016, with 1.6% reporting that the sexual assault occurred in a university setting.'

²⁷⁴ See *ibid* above n 15, chapter 6 and 6.1 for survey findings regarding the reasons that the majority of students fail to report incidents of sexual assault and harassment to their universities and the negative experiences of students following the submission of a report to their university.

²⁷⁵ See *eg ibid* n 15, chapter 6.3(f)(ii), (iii) and (v) which refers to examples of victim blaming attitudes, including the submission of an undergraduate student who was raped in her college room after attending a college party. Following her report of the rape to the head of her residential college, she was placed on a 'drinking ban' and told to 'focus on her studies.' Submission No. 53.

²⁷⁶ Dianne Harrison, President, California State University, quoted in Bowman, above n 252, 7.

the comprehensive management of complaints of sexual assault and harassment but also to the prevention of harmful conduct.

Consistent student engagement with university leadership in the design and evaluation of policies, support services and prevention programs will serve to enhance their relevance to the student population – particularly where engagement is representative of the diverse and distinct needs of student groups, including Aboriginal and Torres Strait Islander students, CALD students, international students, students with disability, and students who are LGBTIQ. Students have been influential in guiding universities towards a more proactive rather than a reactionary or defensive approach to addressing sexual assault and harassment. Their work on this issue also demonstrates the long-term investment required to generate incremental change. One-off campaigns and online training modules adopted by universities have limited value in the absence of **a sustained, long-term, holistic approach to transforming the entrenched conditions** and cultural attitudes and practices that underlie the perpetration of sexual violence both within and ‘outside the gates of higher education’.

6. The student voice: heeding responses to the national student survey

All I know is this keeps happening at these institutions, and nothing ever changes. Inquiries aren't cutting it. Suspensions aren't enough. ...

Seeing yesterday's news (about misogynist conduct at a university college) showed me that time hadn't changed a thing. It is yesterday's news, and it's also today's news. But if institutionalised contempt for women is taken seriously by the universities, it won't be tomorrow's.²⁷⁷

The design of the national student survey – the largest analysis of its kind conducted across Australian universities to date – was predominantly aimed at securing experiences and insights from students who had been victims of sexual assault and sexual harassment, or had known about such incidents, with a view to:

- establishing the extent of sexual assault and harassment experienced by university students (prevalence);
- understanding and enhancing university responses to student reports (disclosure) and complaints of sexual assault and harassment (institutional responses);
- recognising the impact of sexual assault and harassment and institutional responses on student victims and the extent to which student support services (therapeutic and academic) meet student needs; and
- developing appropriate educational mechanisms to reduce university sexual violence (prevention).

While the national student survey has revealed disconcerting evidence about the prevalence of incidents of university sexual assault and harassment, it also identifies significant institutional and cultural barriers to students reporting their experiences of harm, ostensibly resulting in low levels of reporting.²⁷⁸ These barriers reveal the lack of ease or confidence students have in reporting incidents of sexual violence to their university, which suggests that a focus on prevalence – whether high or low – might tend to obscure the very real structural (inaccessible and fragmented reporting

²⁷⁷ Cameron James, 'I Spent One Night at St Paul's College. I Didn't Sleep Because I Was Genuinely Scared', *The Guardian*, 1 June 2017 <https://www.theguardian.com/commentisfree/2017/jun/01/i-spent-one-night-at-st-pauls-college-i-didnt-sleep-because-i-was-genuinely-scared?utm_source=esp&utm_medium=Email&utm_campaign=GU+Today+AUS+v1+-+AUS+morning+mail+callout&utm_term=228932&subid=1423910&CMP=ema_632>.

²⁷⁸ Commission's report, above n 15, chapter 6.3 (a)-(e) and 6.2.

mechanisms, and ineffectual disciplinary processes) and cultural factors that both contribute to the perpetration of sexual violence and undermine its detection and resolution.

Importantly, the failure by students to report can impact on the university community in significant ways:

First, victims of sexual assault are unlikely to secure the counseling and support they need to cope with and heal from this potentially traumatic event in their lives making it more probable that they will engage in 'self-blame', self-medication (e.g., disordered eating and excessive drinking) and other self-destructive behaviors. The friends they disclose their experience to are also likely to be affected, having their own feelings of anger, fear, and/or helplessness. In this way, one sexual assault can have a ripple effect.

Second, unless sexual assaults are reported, students who sexually assault their classmates will not be subjected to appropriate sanctions and counseling. The possibility that they will continue to victimize others is thus increased.²⁷⁹

The failure to report may also 'signal to other potential offenders that their abusive behaviour is acceptable, or even if it is recognised as unacceptable, that it will probably go unpunished.'²⁸⁰

Chapter 2 of this report highlights the critical role of universities in ensuring the expeditious and effective resolution of complaints of sexual assault and sexual harassment in the interests of securing the physical and psychological wellbeing of students harmed by this conduct. Chapter 5 also urges universities to engage with students as key partners in identifying incidents of, and the range of reasons for, university sexual violence. In addition, student participation in the design, implementation and revision of sexual assault and sexual harassment policies and procedures; their evaluation of the effectiveness of these policies; and their consultation in the formulation and delivery of prevention strategies, will reflect and potentially resonate with their peers. Comprehensive and sustained engagement with students can potentially change the culture underlying the violence.

The Australian NUS has been calling on universities for over two decades to support student victims of sexual assault and harassment and associates affected by sexual violence, and to effect measures that prevent its recurrence. A letter to the University of Sydney Vice-Chancellor, Michael Spence, in August 2016 from the women who served as University of Sydney Women's Officers over the last 10 years reflects these persistent efforts by students to persuade universities to finally act on their pleas:

[F]or an entire decade we have been raising the issue of sexual assault and harassment on campus with the administration. For an entire decade we have been met with resistance to change. It seems to us that the University has deliberately stalled action on sexual assault, assuming that once Women's Officers and other activists finish their term, or graduate from university, the institutional knowledge required for a sustained campaign on this issue is lost.

... for well over a decade, the university has been aware of the issue of sexual assault on campus. For over

²⁷⁹ Heather M Karjane, Bonnie S Fisher and Francis T Cullen, *Campus Sexual Assault: How America's Institutions of Higher Education Respond*, 2002, Final Report, NIJ Grant #1999-WA-VX-0008, 137 <<https://www.ncjrs.gov/pdffiles1/nij/grants/196676.pdf>>.

²⁸⁰ Anthony Collins, 'Faceless Bureaucracy?: The Challenges of Gender-Based Violence and Practices of Care in Higher Education' in Vasu Reddy, Stephen Meyer, Tamara Shefer and Thenjiwe Meyiwa (eds), *Care in Context: Transnational Gender Perspectives* (Human Sciences Research Council, 2014) 282, 287.

a decade calls to change this culture have gone unanswered. The same stories of rape and harassment are repeated over and over. Periodically, a particularly high profile case may break into mainstream media, but as the media cycle moves on, and damage control measures are implemented, the issue is once again put to the bottom of the agenda.

This has gone on long enough.

Sexual harassment and assault are fundamentally an issue of student safety and welfare, and the University has a duty to its students to provide a safe environment that is conducive to learning. The University has failed to live up to this duty and instigate genuine cultural change.²⁸¹

Many of the questions included in the national student survey and the recommendations of the Commission, as well as those contained in this report (informed by the Commission's analysis of the national student survey data and examples drawn from comparative international research), are not new. They reflect long-standing considerations and concerns raised by student leadership, university gender activists, and academics and practitioners working in the area of campus sexual violence, both in Australia and internationally.

Despite the consistent message from Australian university students in relation to these issues, the Commission's report indicates that sexual assault and harassment at universities remain at significant levels. Institutional action in response has, in the main, been inadequate or inappropriate, lacking sustained programs of management and prevention directed at cultural change.²⁸²

Giving prominence to the student voice ensures that the research underlying this report (particularly in relation to informing university good practice) is distinctly shaped by the views of university students in Australia and also speaks to the student body. The national student survey provides a crucial opportunity for universities to take concerted action to address and prevent university sexual assault and sexual harassment by demonstrating a long-term commitment to acknowledging the essential contribution of the student voice in exposing, managing and reducing sexual violence. This value of the student experience and expertise can be realised via a number of mechanisms, including:

- an independent national student survey (preferably funded by the federal government) conducted by the Australian Human Rights Commission every three years, with the second national survey being implemented in 2019. The Commission's status as an independent statutory body and its experience in conducting national surveys in relation to harassment and gender-based discrimination – including the 2016 national student survey – provides the appropriate expertise to execute the survey and provide a report that collates and analyses national patterns and trends in relation to prevalence, student reporting experiences and institutional responses, the adequacy of student support services, and the efficacy of prevention strategies. It is recommended that the survey be designed in consultation with student representatives and conducted at a time during the academic year that avoids exam

²⁸¹ Women's Collective, University of Sydney, 'Campus Assaults Have Gone on Long Enough: An Open Letter to the University of Sydney', *The Age*, 23 August 2016 <<http://www.theage.com.au/lifestyle/news-and-views/news-features/campus-assaults-have-gone-on-long-enough-an-open-letter-to-the-university-of-sydney-20160822-gqya1c.html>>.

²⁸² Commission's report, above n 15, chapter 3, 3.3(a)(ii), 3.4(a)(ii) and (iii), 3.5(a)(i) and (ii) and chapter 7. See also chapters 8.1 (Leadership and governance) and 8.2 (Changing attitudes and behaviours).

and holiday periods and maximises student participation;²⁸³

- formalised student representation on committees responsible for formulating and reviewing university sexual assault and harassment policies, on university equity and diversity committees, and on university counselling and medical service advisory boards or committees, as well as student participation in designing and delivering prevention strategies and programs; and
- student representation on various committees referred to above must include representatives who can speak to the specific needs of victims of sexual assault and sexual harassment from student cohorts most affected by sexual violence as identified in the Commission's report – namely, women students, Aboriginal and Torres Strait Islander students, CALD students, international students, students with disability, and those who are LGBTIQ.
- The next three chapters highlight the experiences of students in relation to key areas identified in the national student survey:
 - student reporting of sexual assault and harassment and institutional responses to complaints (**chapter 7**);
 - student support services (**chapter 8**); and
 - prevention measures (**chapter 9**).

The structure of each of these chapters will include a summary of key findings as contained in the Commission's report (which includes an analysis of the national student survey data and submissions made to the Commission), followed by a section on good practice responses to specific issues which draws on comparative international research.

²⁸³ The EROC Australia submission to the Commission recommends that certain principles be observed when designing and implementing survey and submission processes that aim 'to measure levels of sexual assault and harassment at Australian universities, and survivors' satisfaction with universities' responses to sexual assault and harassment': see EROC Australia, above n 84, Recommendation 30.

7. Institutional responses to student disclosure and reporting of sexual assault and harassment

By beginning to break any 'codes of silence' that frustrate effective responses, the initiative is likely to empower people to report sexual harassment and assault, which we hope will also reduce the frequency of such behaviour.²⁸⁴

7.1 Key findings by the Australian Human Rights Commission

A feature of the Commission's report on the national student survey, consistent with the NUS *Talk About It* surveys, is the relatively low reporting of incidents to either universities or police.²⁸⁵ The reasons identified in the Commission's report include:

- a failure by the victim to recognise that the conduct corresponds with the definitions of sexual assault and/or harassment;
- the shame, self-blame or stigma associated with the incident as a barrier to reporting;
- a sense that the incident was not serious enough to merit making a formal complaint;
- a lack of knowledge about where or how to make a report due to insufficient or inaccessible information regarding reporting mechanisms;
- a belief that the university would not take the incident seriously or would respond inappropriately;
- a fear that reporting an incident to a university might result in a subsequent police report, which the student was keen to avoid; and

²⁸⁴ Jacobs, above n 55.

²⁸⁵ The Commission's report highlights that only 2% of students who were sexually harassed and 9% of students who were sexually assaulted in a university setting made a formal report to the university. Commission's report, above n 15, chapter 8.3. These findings correspond with the 2015 NUS *Talk About It* survey, which found that of the 1,366 students who responded to the survey, less than 6% of those who had experienced sexual assault or sexual harassment reported the incident to the university. Reasons for non-reporting included: 23% of respondents did not know to whom they should report an incident; 25% did not make a report because they feared they would be blamed for the incident; and 18% said they failed to make a report because they did not expect to be believed. See NUS (2015), above n 5, 22. See also Kate Wolitzky-Taylor et al, 'Reporting Rape in a National Sample of College Women' (2011) 59(7) *Journal of American College Health* 582, which found that women who experienced injury during rape were significantly more likely to report the incident.

- a lack of trust in the capacity of a university reporting and investigative process to deliver a beneficial outcome.²⁸⁶

The Commission's report identifies further barriers to reporting, which include concerns of the victim regarding the potential consequences for the alleged perpetrator ('not wanting to cause trouble, or having concern for the impact it might have on the perpetrator's life and wellbeing'), regardless of the harm that the perpetrator might have inflicted;²⁸⁷ the impact of reporting on the victim's academic studies and career; and the fear that the reporting process would be traumatic or onerous.²⁸⁸

Further, despite the existence of policies evidently directed at managing or preventing university sexual assault and harassment, these are often regarded by students as deficient, fragmented, inappropriate, poorly publicised and disseminated,²⁸⁹ and lacking effective enforcement.²⁹⁰

7.2 Good practice responses: creating an effective reporting and disciplinary framework

By reference to the Commission's report and comparative international research, this section considers the concerns and barriers raised by students in regard to disclosing and reporting their experiences, and how to enhance institutional responses.

7.2.1 Equipping 'first responders' to respond to first disclosures of sexual assault and harassment

The Commission's report highlights numerous negative experiences by students following their disclosure to universities of incidents of sexual assault or harassment, revealing responses that include disbelieving or blaming the victim.²⁹¹ The normalisation of sexual harassment within university culture has also resulted in victims receiving little empathy and support in response to their disclosure:

A good friend of mine has been harassed, stalked and felt in danger by a colleague. The department were notified and she was treated like it was a shame she didn't reciprocate his feelings!²⁹²

The critical first response to a victim reporting an incident of sexual assault or harassment by university personnel (including security, medical and counselling staff) and residential college staff, faculty members and bystanders can either provide a constructive frame for the whole experience or serve to exacerbate the victim's trauma. If the response to an initial disclosure is inappropriate,

²⁸⁶ Commission's report, above n 15, chapter 6.2(a) and (d).

²⁸⁷ Ibid 6.2(d)(v).

²⁸⁸ Ibid 6.2(d)(vi), (vii) and (viii).

²⁸⁹ Ibid 6.2(c) and 6.2(d)(xi) highlighting findings that the majority of students have 'little to no knowledge' about their university's policies covering sexual assault and harassment.

²⁹⁰ See ibid 6.2(d)(xii) regarding students' lack of confidence that their university would take action against the perpetrator.

²⁹¹ Ibid 6.2(d)(ii) and (iv) and chapter 7(c)(i).

²⁹² Ibid chapter 6.3(f)(iii); Submission No 845.

inadequate, counter-productive or poorly managed, the victim may be dissuaded from seeking support or further reporting the incident and may minimise or repress the experience as a way of dealing with the trauma of the assault.²⁹³

One important approach to minimising any further harm that may be generated (even inadvertently) on reporting an incident of sexual assault or harassment is the provision of trauma-informed sexual assault training for staff and students²⁹⁴ who may be first responders to disclosures of sexual violence.²⁹⁵ This training (which equips first responders to identify and respond to signs of sexual violence, even when symptoms may not be evident) includes:

- assessing capacity to perform the role of first responder;
- determining responses to disclosure in line with the needs of different students cohorts (such as international or LGBTIQ students);
- evaluating the impact of sexual violence on victims (including interference with cognitive function); and
- identifying the range of advice that may be provided.

The training of first responders requires specific tools and skills to manage the disclosure of sexual assault, including an appreciation of the difference between initial disclosure and reporting of a complaint for investigative purposes. Some of the universities reviewed as part of this project have teams specifically focusing on developing first responder training. The training and development team of the Sexual Assault Response Team at the University of Cape Town has developed a first responder curriculum²⁹⁶ and has a team of experts that trains university staff and students in how to respond to and prevent sexual assault. Similarly, the University of Oxford's first responder guidelines provide advice on how best to approach a victim (for example, 'show empathy; let the individual stay in control; provide information on relevant services; ask what they would like to do next; keep a record in case you are subsequently called to give evidence') and what to avoid (for example, asking the victim questions that could be perceived as judgmental or designed to ascertain whether the victim is to blame, such as 'about consumption of alcohol or [the victim's] relationship to the offender').²⁹⁷ These guidelines are available online, making them accessible to all staff and students.

²⁹³ For a discussion on the deleterious effects of inappropriate responses, see Courtney Ahrens, 'Being Silenced: The Impact of Negative Social Reactions on the Disclosure of Rape' (2006) 38(3-4) *American Journal of Community Psychology* 263.

²⁹⁴ Students at SUNY at Cortland who train as first responders undergo a two-part training program to equip them to most effectively respond to this form of trauma. The first part of the program develops a responder's ability to identify the various manifestations of sexual violence. During the second component, students use role-play scenarios to determine how best to approach a victim. See SUNY Cortland, *First Responders to Sexual Assault Learn from College* (3 May 2016) <<http://www2.cortland.edu/news/detail.dot?id=76d3c8c8-586d-4170-9642-6f67fcc3ecfb>>.

²⁹⁵ The Commission's report notes that despite very low numbers of formal reporting, students do disclose incidents of sexual assault and harassment to, and seek support from, lecturers, tutors at residential colleges, or campus security. See Commission's report, above n 15, chapter 6.1(b) and chapter 8.3.

²⁹⁶ Sexual Assault Response Team, *Mission and Vision*, University of Cape Town <<http://www.sart.uct.ac.za/sart/about/mission>>.

²⁹⁷ One of the most comprehensive policies on disclosure is University of Oxford, *Supporting Staff and Students That Have Experienced Sexual Assault* (16 September 2016) <<http://www.admin.ox.ac.uk/eop/harassmentadvice/policyandprocedure/guidance/>>. See also fig 1: 'Trauma-informed Care for Survivors of Campus Sexual Assault' in Jena Nicols Curtis and Susan Burnett, 'The Role of EMS in Helping Survivors of Campus Sexual Violence', *Journal of Emergency Medical Services*, 5 April 2016 <<http://www.jems.com/articles/print/volume-41/issue-40/features/the-role-of-ems-in-helping-survivors-of-campus-sexual-violence.html>>. Oxford University students involved in the sexual violence awareness campaign *It Happens Here*, in collaboration with the Oxford Sexual Abuse and Rape Crisis Centre and Code4Rights, have developed an app, *First Response*, which 'takes survivors and friends of sexual assault survivors through the most relevant options available to them, from attending a sexual assault referral centre to

Universities may wish to identify first responder points of contact across a university, including in colleges,²⁹⁸ in front-line services such as security, and within student organisations, such as Women's Officers. Given that students are more likely to disclose an incident to a faculty member,²⁹⁹ it may be appropriate for universities to require each faculty to designate a first responder point of contact and publicise this decision to the student body, including on signage in common student areas and in student faculty material or handbooks.

7.2.2 Developing simple, fair, accessible and robust reporting mechanisms

Reporting an incident of sexual assault or harassment can be fraught and exacerbated by a lack of understanding of the process and the potential outcome, a fear of losing control of the process (for example, if the matter is referred to police),³⁰⁰ and concerns about confidentiality and the protection of personal identity. The existence of a stand-alone, coherent and substantive university sexual assault and harassment policy and procedure, together with an easily accessible reporting mechanism, can greatly facilitate reports of sexual violence and appropriate redress. The re-telling of an account of sexual assault or harassment to multiple parties (from first responders, to university legal officers, to medical services) can be a fragmented, confusing and overwhelming experience for victims of sexual violence and can act as a disincentive to reporting. This consideration underlies the need for the existence of a simple, unified reporting process that limits the need for repeat accounts to numerous university units or agencies (but ensures their appropriate interaction in meeting the needs of the student).

In 2016, in response to the Legislative Assembly of Ontario's Bill 132 (*Sexual Violence and Harassment Action Plan Act (Supporting Survivors and Challenging Sexual Violence and Harassment) 2016*) – which applied to every university in receipt of government funding³⁰¹ – the University of Toronto convened an Expert Panel to advise on 'principles and recommendations for a new stand-alone policy on sexual violence and [to] provide general recommendations for

calling the police and getting medical attention. It provides information about optional ways to respond to a sexual assault and essential knowledge about support resources including critical contact details and answers to frequently asked questions such as what constitutes sexual consent'. See University of Oxford, 'Oxford Students Launch New App Supporting Sexual Assault Survivors', 15 October 2015 <<http://www.ox.ac.uk/news/2015-10-15-oxford-students-launch-new-app-supporting-sexual-assault-survivors>>.

²⁹⁸ Durham University's webpage on support for sexual violence at university identifies three different avenues for disclosing incidents of sexual violence and misconduct, including College Support Offices, the University Counselling Service, and Nightline – a confidential non-advisory, non-directive service run by students for students. See Durham University, *Support at Durham University* (2 February 2017) <<https://www.dur.ac.uk/sexualviolence/getsupport/university/>>.

²⁹⁹ Commission's report, above n 15, chapter 6.1(b): Of students who sought university support, 35% of those who were sexually harassed and 18% of those who were sexually assaulted spoke to someone in their faculty or school.

³⁰⁰ 'Sexual assault or sexual violence can make an individual feel powerless and not in control. Individuals need to feel they can be in charge of their lives again and it is important to resist the temptation to take over by arranging and doing things that you think are best.' University of Oxford, *Supporting Staff and Students That Have Experienced Sexual Assault*, above n 297, [6]; Harvard Law School, above n 215, [5.1].

³⁰¹ See *Sexual Violence and Harassment Action Plan Act (Supporting Survivors and Challenging Sexual Violence and Harassment) SO 2016, c 2-Bill 132, s 17(2)*. Section 17(3) of the Bill requires every college or university to have a sexual violence policy that (a) addresses sexual violence involving students enrolled at the college or university and (b) sets out the process for how the college or university will respond to and address incidents and complaints of sexual violence. Section 17(5) requires that every university shall review its sexual violence policy at least once every three years and amend it as appropriate. The regulations accompanying the Bill, which came into effect on 1 January 2017, require universities to establish a process to consult widely regarding the development of the sexual violence policy. Section 17(7) mandates universities to provide data to the Minister Responsible for Women's Issues regarding the 'number of times supports, services and accommodation relating to sexual violence are requested and obtained by students; initiatives and programs established by the college or university to promote awareness of the supports and services available to students; the number of incidents and complaints of sexual violence reported by students, and information about such incidents and complaints; the implementation and effectiveness of the (sexual violence) policy'.

revisions to existing University policies addressing sexual violence and sexual harassment'.³⁰² In considering the processes for reporting cases of sexual violence, the panel recommended a plain language student companion document that provides examples of conduct that might enliven the policy (such as cyber-sexual violence); points of contact for victims; diagrammatic illustrations of the post-reporting investigation and adjudication processes; available interim measures and conditions following a report and pending an investigation; and links to relevant resources.³⁰³ A flowchart can also be a useful and simple way to visually illustrate the various procedures.³⁰⁴

The difference between disclosing and reporting a case of sexual assault or harassment for investigative purposes should be clarified in any policy or companion documentation, as universities might stipulate timeframes within which students can make a formal report or complaint. Leiden University stipulates that complainants have one year from the date of the incident in which to file a complaint; by contrast, the Indian University Grants Commission Regulations, which apply to all universities, require a complaint to be made within three months of the incident, with a possible three-month extension.³⁰⁵ A longer timeframe (or no stipulation) may be more appropriate, given that disclosure by victims is often delayed due to trauma, fear of retaliation, concerns about stigma, or impact on family members.

Where a student wishes to report an incident to their university that may constitute criminal conduct, particularly in cases of sexual assault, their university may elect to advise the student that the institution is unable to act in the absence of a report to the police. The Commission's report refers to instances where universities informed students that they could not take any action in response to an incident of sexual assault or harassment 'unless they [the students] were willing to make a report to police'.³⁰⁶ Alternatively, some universities (particularly in the state of New South Wales (NSW)) may assume that in matters of possible criminal conduct, such as sexual assault, their responsibility extends to reporting such incidents to the police.

A failure by universities to fully appreciate the nature of reporting obligations under relevant legislation can risk their precipitous referral of an allegation to the police contrary to the wishes of the victim and, potentially, to their detriment (if, for example, the victim fears the involvement of the police or retaliation by the alleged perpetrator).

In NSW, under s 316 of the *Crimes Act 1900* (NSW), any person who fails to report information pertaining to a 'serious indictable offence' to the police without a reasonable excuse may face two years' imprisonment. A 'serious indictable offence' is any offence that is punishable by imprisonment

³⁰² University of Toronto Expert Panel on Sexual Violence Policies, *Recommendations for a New Sexual Violence Policy* (4 August 2016), 8 <http://www.provost.utoronto.ca/Assets/Provost+Digital+Assets/SV_Panel_Recommendations.pdf>.

³⁰³ University of Toronto, *The Student's Companion to the Code of Student Conduct* (August 2016) <<http://www.viceprovoststudents.utoronto.ca/Assets/Students+Digital+Assets/Vice-Provost+Students/Code+of+Student+Conduct/The+Student+Companion.pdf>>.

³⁰⁴ See eg the University of Oxford, *Harassment Procedure Flowchart for Students* <http://www.admin.ox.ac.uk/media/global/wwwadminoxacuk/localsites/equalityanddiversity/documents/harassment/Harrassment_flowchart_A4_STUDENTS_WEB.pdf>.

³⁰⁵ Leiden University, *Regulation on Complaints Relating to Unacceptable Behaviour* (14 March 2012), art 2(5) <<http://www.organisation.leiden.edu/complaint-box-students/regulation-on-complaints-relating-to-unacceptable-behaviour.html>>; University Grants Commission, above n 74, s 7.

³⁰⁶ Commission's report, above n 15, chapter 6.3(f)(xi).

for five years or more,³⁰⁷ such as sexual assault³⁰⁸ and indecent assault.³⁰⁹ However, depending on the facts of each case, certain individuals, 'in the course of practising or following a profession, calling or vocation' (such as lawyers, doctors, psychologists and nurses) may be free from prosecution under s 316³¹⁰ if they obtained the information in the course of their professional or religious duties.³¹¹

The introduction of this reporting duty in 1990 raised many concerns, such as that it might discourage victims from seeking support and medical assistance due to fears of police intervention.³¹² Despite these concerns and a recommendation by the Law Reform Commission for the section to be repealed, s 316 remains in place.³¹³

These reporting obligations highlight the need for universities, at least in NSW, to ensure that their policies and procedures in relation to sexual assault provide a mechanism for making reports to the police, while also guaranteeing victim confidentiality if required, and specifying how incidents will be handled internally by the university pending the outcome of a criminal investigation. Relevant staff in residential colleges, student counselling and medical services, and university security units (that is, potential first responders) should be fully apprised of the nature of these obligations in order to provide victims with comprehensive information regarding their reporting options.

Online reporting

Concerns about confidentiality, lack of information about reporting procedures, and uncertainty about how to file a report of sexual assault or harassment can act as barriers to reporting. The Commission's report states that 'one in three students who reported being sexually harassed or sexually assaulted did not receive an explanation of the reporting process.'³¹⁴

Reporting an incident of sexual assault or harassment is a difficult process, more so when it is done

³⁰⁷ *Crimes Act 1900* (NSW) s 4.

³⁰⁸ *Ibid* s 61L.

³⁰⁹ *Ibid* s 61L: 'Any person who assaults another person and, at the time of, or immediately before or after, the assault, commits an act of indecency on or in the presence of the other person, is liable to imprisonment for 5 years.'

³¹⁰ *Crimes Act 1900* (NSW) ss 316(4), (5); *Crimes Regulation 2015* (NSW) s 4. In this instance, a prosecution under s 316 may only be commenced with the approval of the Attorney-General.

³¹¹ See *Prime Finance Pty Ltd v Randall* [2009] NSWSC 361. See also *Re David, Alan and Mary and the Director General Family and Community Services* [2014] NSWSC 1077, which, in drawing on the High Court's decision in *A v Hayden (No 2)* (1984) 156 CLR 532, suggests that the public interest in the administration of justice may be a factor preventing a court from restraining disclosure of confidential information. For a general discussion of s 316, see Police Integrity Commission, *Protea Report* (2015) ch 11 <<https://www.pic.nsw.gov.au/files/reports/Protea%20Report.pdf>>. This report includes a discussion of the reasons witnesses gave for blind reporting, including concern that the information they provided to the Commission should not be communicated to the police and that the wishes of victims be respected: Police Integrity Commission, *Protea Report* (2015) [11.25] <<https://www.pic.nsw.gov.au/files/reports/Protea%20Report.pdf>>.

³¹² New South Wales Law Reform Commission, *Review of Section 316 of the Crimes Act 1900 (NSW)*, Report No 93 (1999). See also New South Wales Law Reform Commission, 'Media Release – Review of Section 316 of the Crimes Act 1900 (NSW)' (Media Release, 14 January 2000) <http://www.lawreform.justice.nsw.gov.au/Pages/lrc/lrc_news/lrc_mediareleases/lrc_mr1966-2006/lrc_mediar93.aspx>.

³¹³ No equivalent obligation exists under analogous state, territory or Commonwealth legislation. The Commonwealth and most states and territories have legislation making it an offence for a person to accept a benefit in exchange for not reporting an offence, a serious indictable offence, or a crime: see *Crimes Act 1914* (Cth) s 44; *Crimes Act 1958* (Vic) s 326(1); *Criminal Code Act 1899* (Qld) ss 133–134; *Criminal Code 1913* (WA) s 136; *Criminal Code Act 1924* (Tas) s 102(1); *Criminal Code Act* (NT) s 104(1).

³¹⁴ Commission's report, above n 15, chapter 6.3(f)(xi).

face-to-face. The Commission's report referred to many submissions that indicated that the absence of an anonymous reporting mechanism discouraged students from reporting their experiences.³¹⁵ A centralised, accessible reporting mechanism that guarantees anonymous and confidential disclosures, allows students to make a report at a time and place where they feel comfortable and secure,³¹⁶ and enables the systematic recording of incidents may serve to facilitate greater reporting of incidents of sexual violence and harassment.

Online reporting tools not only facilitate disclosure by victims of sexual assault and harassment who are reluctant to report an incident in person, but also enable greater understanding by universities of the prevalence and nature of sexual violence on campus, allowing for the identification of specific areas of concern and targeted responses.³¹⁷

One innovative reporting mechanism that seeks to enable and simplify reporting is the Callisto online reporting tool,³¹⁸ which permits victims 'to report at a time and place that feels safest to them'.³¹⁹ Several US universities are using Callisto as part of their reporting procedures, enabling an anonymous, time-stamped online record of an incident that can be reported immediately or saved for submission at a later date. A key feature of the reporting tool is the 'information escrow option', which provides that a victim's report only proceeds to investigation if another victim names the same perpetrator in a separate incident report.³²⁰

Elsewhere, mechanisms have been implemented to enable anonymous reporting to the police. These mechanisms offer the victim the protection of preserving their evidence of an incident without necessarily leading to their involvement in any subsequent judicial process. The Ending Violence Association of British Columbia has been implementing a province-wide Third Party Reporting initiative that enables reports of sexual assault to be filed anonymously with the police via support agencies or counsellors. The initiative allows the police to track repeat offenders of sexual violence and, similar to Callisto, if a victim reports the same offender, the initial victim is contacted to see if they wish to speak to the police with a view to supporting an investigation. In Australia, Queensland Police provides the victim with an 'alternative option to making a formal complaint' to the police via a system called the Alternative Reporting Options (ARO). ARO, which recognises that 'many survivors have reasons for not officially reporting the crimes of sexual assault or rape', provides the victim

³¹⁵ Ibid 6.2(d)(viii) and (x).

³¹⁶ Manchester University (UK) has developed an anonymous online reporting tool for reports of sexual violence, which can be completed via the university's public webpage. See Manchester University, *Report and Support* <<https://www.reportandsupport.manchester.ac.uk/report/anonymous>>. The Durham University Sexual Violence Taskforce has recommended a reporting tool that enables formal, anonymous and third-party reporting: Durham University, above n 63, 11.

³¹⁷ Students at the University of Oregon have access to an Anonymous Sexual Assault Report Form, which states: 'If you as a student survivor or reporter wish to remain anonymous, fill out this Anonymous Report Form. The university will use this information for statistical purposes, to better understand the scope of sexual violence on campus, and to develop and implement preventive efforts.' See <<https://police.uoregon.edu/anonymous-sexual-assault-report-form>>.

³¹⁸ Project Callisto, *What We Do* <<https://www.projectcallisto.org/what-we-do/>>.

³¹⁹ Sexual Violence Task Team, above n 160, 11.

³²⁰ Project Callisto, *How Callisto Works* <<https://www.projectcallisto.org/>>. The University of San Francisco was one of the first universities to use the Callisto reporting system. Arvin Temkar, 'USF Implements Groundbreaking Sexual Assault Reporting', *University of San Francisco News & Media*, 17 June 2015 <<https://www.usfca.edu/news/usf-implements-groundbreaking-sexual-assault-reporting>>. See also Ian Ayres, 'Meet Callisto, the Tinder-like Platform That Aims to Fight Sexual Assault', *The Washington Post*, 9 October 2015 <https://www.washingtonpost.com/opinions/using-game-theory-technology-to-fight-sexual-assault/2015/10/09/f8ebd44e-6e02-11e5-aa5b-f78a98956699_story.html?utm_term=.7eb9e5854b6f>.

with 'the opportunity to provide police with the full circumstances of their assault with the option of remaining anonymous'.³²¹

Protocols governing the use of online reporting mechanisms should form part of a university's comprehensive reporting process, covering issues such as confidential reporting, management of confidential information, and undertakings regarding secure storage of such information.³²²

7.2.3 Clear signposting of policies, procedures and outcomes

Visibility of sexual assault and harassment policies

The visibility and accessibility of university policies on sexual assault and harassment was a concern of many student respondents to the national survey, with the Commission's report disclosing that 52% of students had little or no knowledge of the existence or location of these policies.³²³ The effectiveness of university responses to reports of sexual assault and harassment is dependent on their accessibility to students. Accordingly, dissemination and signposting of these policies, their application, and potential outcomes is critical to shaping the decision to report an incident to the university, a health service or the police.³²⁴ The failure to disseminate information about the possible outcomes of disciplinary hearings arising from complaints of sexual assault and harassment is also a deterrent to students reporting incidents of sexual violence.

The campus screenings of the documentary *The Hunting Ground*, and the launch of Universities Australia's *Respect. Now. Always.* Campaign, prompted many Australian universities to revisit and enhance the signposting of policies and support services on their websites and provide clearer access to relevant information.³²⁵ Other resources, such as Student Handbooks, are also useful conduits for information on policies and procedures,³²⁶ as are social media campaigns during events such as O-week, online induction or training modules for new students, and the creation of specific

³²¹ Queensland Police, *Alternative Reporting Options* (16 October 2014) <<https://www.police.qld.gov.au/programs/adultassault/altReportOpt.htm>>. Queensland Police also states that:

ARO can be an extremely useful healing strategy for the survivor and an effective investigative strategy for law enforcement agencies. Survivors can feel empowered by knowing that the information they possess and provide could be used to solve reported offences of a similar nature. Police can use this information to: assist other prosecutions against an offender; and protect the community by enabling police to devise intelligence driven strategies designed to target an offender and reduce repeat offending.

In New South Wales, a similar reporting option is available called the Sexual Assault Reporting Option (SARO): NSW Police Force, *Adult Sexual Assault* (1 September 2016) <http://www.police.nsw.gov.au/community_issues/adult_sexual_assault>. <http://www.police.nsw.gov.au/community_issues/adult_sexual_assault>

³²² See University College London, *Student Confidentiality Statement: How UCL Manages Confidential Information*, Policy, UCL Academic Manual 2016–17 <http://www.ucl.ac.uk/srs/academic-manual/documents/annexes_2016-17/chapter_1_annexes_16-17/Annex_1.2.1_Student_Confidential_Information_Statement.pdf>.

³²³ Commission's report, above n 15, chapter 6.2(c).

³²⁴ The University of Kent (UK) provides a good example of clearly signposted and informative webpages on sexual assault covering topics such as 'Are you safe?', 'Deciding what to do next', 'Time Frames', 'Reporting to the Police', 'Confidentiality' and 'Getting Support'. See University of Kent, *Rape and Sexual Assault* (17 February 2017) <<https://www.kent.ac.uk/studentsupport/sexual-assault.html>>.

³²⁵ See *The Hunting Ground Australia Project*, above n 16.

³²⁶ The Oxford University Student Handbook summarises the key provisions of regulatory documents and provides information on various student support issues, including sexual violence and harassment. See University of Oxford, *The University Student Handbook 2016/2017* <https://www.ox.ac.uk/sites/files/oxford/field/field_document/University%20Student%20Handbook%202016-17_web.pdf>.

apps that students can access via mobile phones.³²⁷

Dissemination of outcomes of disciplinary hearings

Following the determination of a disciplinary hearing, the university should inform the parties of the outcome without delay. It is preferable that this information is delivered in person, where possible, to allow questions and clarification regarding the impact or ramifications of the outcome. In accordance with university policies, where relevant, the parties should also be informed of the right of review/appeal, the grounds for such a review/appeal, the process, and the possible outcome.

In addition, the dissemination of disciplinary outcomes within the university community can also demonstrate the effectiveness of university policies directed at addressing and preventing sexual assault and harassment. The publication of this de-identified data can also act as a deterrent to potential perpetrators. Rhodes University (South Africa) publishes student disciplinary reports that include incidents of sexual harassment and assault and their outcomes.³²⁸ While protecting the identity of those involved, the reports include information about the nature of the complaint; whether the matter was determined by a disciplinary hearing, through mediation or by a court; mitigating and aggravating factors; and the sanction(s) imposed. The reports also include any cases currently under investigation by the university. Similarly, the SART at the University of Cape Town has published three quarterly reports since 23 May 2016 on cases of sexual violence that have occurred on and off campus involving staff and students.³²⁹ These de-identified reports provide a detailed overview of the facts of sexual assault and harassment cases and identify trends occurring on the basis of these findings.

7.2.4 Effective enforcement of policies

Allied to concerns about visibility and accessibility of policies on sexual assault and harassment are perceptions that universities fail to fully enforce their policies. Institutional responses to complaints of student sexual assault or harassment will only secure legitimacy if they are investigated and resolved in an appropriate and timely manner, and impartially and effectively enforced by those with the relevant skill and expertise.

The reliability of policies to deliver procedural and substantive resolution is critical to student usage of sexual assault and harassment policies and procedures. To this end, policies (and related documents) must clearly outline key elements of the process to allow for informed decision-making by students. These elements include:

- established points of contact for reporting ('first responders');³³⁰

³²⁷ For example, the University of Adelaide (Australia) Out Of Bounds app explains laws relating to 'sexting, cyber-bullying, and unlawful sexual intercourse'. See para 9.2.6 below.

³²⁸ Rhodes University, *Reports on Past Student Disciplinary Cases* (10 February 2017) <<http://www.ru.ac.za/registrar/discipline/studentdisciplinarycases/>>.

³²⁹ Sexual Assault Response Team, *Quarterly Reports*, University of Cape Town <<http://www.sart.uct.ac.za/sart/get-info/reports>>.

³³⁰ Various universities have confidential advisors within their faculties who act as first responders, giving support and advice as to possible complaint options. The University of Amsterdam has a confidential advisor appointed in each faculty, who receives informal complaints, records complaints, and provides support during the complaints procedure: University of Amsterdam, *Confidential Advisor for Undesirably Behaviour* (13 April 2017) <<http://student.uva.nl/en/content/az/confidential-adviser-for-undesirable-behaviour/confidential-adviser-for-undesirable-behaviour.html>>. The University of Oxford has a confidential harassment advisor network of

- anonymous reporting options;
- the nature of evidence required;
- the investigative and disciplinary steps;
- guarantees of confidentiality and situations that may require its breach³³¹ – where, for example, there are concerns relating to the safety and security of students;
- interim support measures and accommodation and academic arrangements available to victims and alleged perpetrators which can be implemented prior to, and regardless of, the outcome of the international disciplinary process;
- the difference between an internal disciplinary process (which investigates the breach of an institutional policy or code) and a criminal investigation and trial (which examines an allegation of a criminal act), and the respective standards of applicable proof;
- the information available at various stages of the investigation and disciplinary/criminal hearing;
- approximate timeframes for each process (this is of particular importance to international students who may be returning to their home country);
- the possible outcomes of the process, including the possibility that there will be insufficient evidence to establish or confirm the allegations;
- the range of sanctions and penalties that may be imposed if the allegations are established;
- the review or appeal procedures; and
- the nature of available support, including support people and legal, counselling and medical services.

The personnel who execute these procedures via disciplinary committees or panels (at first instance and at appeal/review hearings) can serve to fortify or undermine student perceptions of the process. It is therefore important to ensure that membership of these mechanisms is transparent and that members have the appropriate expertise and experience, and that they reflect the diversity of the student population. Faculty members (from disciplines such as law, social work, psychology and medicine) with relevant expertise should be considered as potential members to serve on or advise disciplinary committees and hearings, particularly those determining the outcome of complaints of sexual assault and harassment. The chairperson of the disciplinary complaints panel at Leiden University (Netherlands) is a legal specialist and other panel members have expertise in dealing with or preventing unacceptable behaviour, including sexual assault.³³² Members of the disciplinary panel convened by the University of the Witwatersrand's Sexual Harassment and Safety Office in South

approximately 370 advisors across the university, with two advisors appointed within each department and faculty: University of Oxford, *Harassment Advisor Network* (4 April 2017) <<https://www.admin.ox.ac.uk/eop/harassmentadvice/advisornetwork/>>.

³³¹ See the information provided by the Office of Sexual Assault Prevention & Response, Harvard University, which lists various exceptions to the confidentiality rule: Office of Sexual Assault Prevention & Response, *Confidentiality* (2017) Harvard University <<https://osapr.harvard.edu/pages/confidentiality>>.

³³² Leiden University, above n 305, art 4(1). Similarly, at the University of the Witwatersrand in South Africa, the disciplinary procedure for gender-related misconduct (which encompasses gender discrimination, sexual harassment and sexual assault) requires a chair who is a legal professional or academic; a member of the University's Sexual Harassment Advisory Committee or other appropriate gender expert; and a member of Senate where the respondent is a staff member, or a member of the Student Representatives Council where the respondent is a student. See University of the Witwatersrand, *Disciplinary Procedure for Gender-Related Misconduct, Staff and Students* (30 March 2015), art 6(2) <<https://www.wits.ac.za/media/wits-university/students/gender-equity-and-tolerance/documents/Disciplinary%20Process%20for%20Gender-Related%20Misconduct.pdf>>.

Africa are legal practitioners and academics, psychologists and social workers and are required to have specialised knowledge in the area of gender-based violence.³³³

7.2.5 Comprehensive data collation and recording systems

*Our common experience is that universities often fail to recognise the value of complaints to management as part of system improvement. They do not have effective complaint systems and procedures and lack comprehensive centralised record keeping.*³³⁴

A key indicator of the enforcement and efficacy of university sexual assault and harassment policies and procedures is the existence of a robust, centralised data collection and recording system that ensures that all reports of incidents disclosed to various sources are recorded within one central database and stored in accordance with university protocols.³³⁵ This prevents the duplication or omission of reports and provides universities with critical information as to prevalence within their institutions, including data that identifies repeat offenders. The data might also serve to point to areas within sexual assault and harassment policies and procedures that require periodic review and adjustment.

Research on university sexual assaults suggests that many assaults are either never reported for recording purposes or, if reported, they are not consistently 'counted as official'.³³⁶ Effective reporting, data collation and analysis rely on the use of consistent terminology and definitions to ensure that reliable and comprehensive information is captured from different agencies or sites to which students have reported incidents of sexual violence. Robust data collation also relies on students' perception of what amounts to sexual assault or harassment, and the circumstances or factors that may or may not facilitate a report – for example, the effect of self-blame, questions of consent, the use alcohol or drugs at the time of the assault, and the relationship of the victim and perpetrator to one another (friends, associates or strangers).

The system should be designed to collect data reported to all relevant university units (for example, security and the legal office), services (health and counselling), and faculties or colleges that might receive reports of cases of sexual assault and harassment. While counsellors and health professionals may be exempt from reporting obligations under certain circumstances, they should be required to record de-identified incidents of sexual assault and harassment, even if reports are made on a confidential basis.

If well-designed, a data recording system can also monitor trends and provide analysis of risks or other environmental factors that may be contributing to campus sexual assault. Such a system may also assist in identifying repeat offenders, deficiencies in support services, reports made to police, and the outcome of externally managed investigations. A robust data system at each university can

³³³ University of the Witwatersrand, above n 158, 12, s 11.3.

³³⁴ Victorian Ombudsman, *Review of Complaint Handling in Victorian Universities* (May 2005), 7 <<http://www.austlii.edu.au/au/other/VicOmbPRp/2005/3.pdf>>.

³³⁵ University College London, above n 322.

³³⁶ American Association of University Professors, Committee on Women in the Academic Profession, above n 60, 366.

also provide a base for useful year-to-year comparisons within a university that may speak to the efficacy of policies and procedures or highlight the need for their revision. Collectively, such systems can also provide the basis for useful national university data analysis.

7.2.6 Monitoring, evaluation and revision of policies

The integrity of policies is enhanced when they are implemented by properly trained staff, regularly monitored and reviewed via university audit or analogous processes, evaluated by students in relation to content, procedure and impact or utility,³³⁷ and adapted or revised in accordance with university objectives and student needs. As noted in chapter 5, the legitimacy and use of policies and procedures will also be enhanced where universities can point to them being developed collaboratively with student-led organisations and other stakeholders, such as local sexual assault services and the local police, and where student views are incorporated³³⁸ following policy reviews.³³⁹

Some Canadian legislation requires all universities to review their policies at least every three years,³⁴⁰ and some universities conduct campus climate surveys to inform their policy drafting process, to evaluate the effectiveness of newly implemented services and reporting processes, and to ensure the proper operation of new policies.³⁴¹ To inform the university's policy on sexual assault response and prevention, the Campus Climate Survey conducted by Queen's University (Canada) in 2015 and administered by the US-based Education Advisory Board, which provides services to universities across the US and Canada, drew on literature reviews, analysis of other surveys, and feedback from sexual violence experts and stakeholders.³⁴² During the drafting process for its new policy, Queen's University also utilised a confidential online feedback survey.³⁴³ The University Grants

³³⁷ In Canada, some provincial legislation mandates universities to ensure that student input is considered in the development of policy and when the policy is reviewed or amended. See *Sexual Violence and Harassment Action Plan Act (Supporting Survivors and Challenging Sexual Violence and Harassment)* SO 2016, c 2-Bill 132, sch 3. Universities have also set up taskforces to devise an overall sexual assault and harassment strategy that involves the input of student organisations. See the Michigan State University Task Force on Sexual Assault and Relationship Violence, the University of Ottawa Taskforce on Respect and Equality (which includes community partners, including the Ottawa Rape Crisis Centre), and the Durham University Sexual Violence and Misconduct Operations Group (which includes the Student's Union Communications Officer): Durham University, *Membership of the Sexual Violence & Misconduct Operations Group* (3 February 2017) <<https://www.dur.ac.uk/sexualviolence/svmog/members/>>; Michigan State University Task Force on Sexual Assault and Relationship Violence, *2014 Sexual Assault and Relationship Violence Policies and Program Taskforce* (6 April 2015) Michigan State University <<http://oie.msu.edu/documents/2014%20Sexual%20Assault%20and%20Relationship%20Violence%20Policies%20and%20Programs%20Task%20Force.pdf>>; University of Ottawa, *Report of the Taskforce on Respect and Equality: Ending Sexual Violence at the University of Ottawa*, 8 <<https://www.uottawa.ca/president/sites/www.uottawa.ca.president/files/report-of-the-task-force-on-respect-and-equality.pdf>>.

³³⁸ See generally Jade Tyrrell and Sally Varnham, 'The Student Voice in University Decision-making' in Sally Varnham, Patty Kamvounias and Joan Squelch (eds), *Higher Education and the Law* (Federation Press, 2015), 30.

³³⁹ The University's *Policy on Sexual Assault and Sexual Misconduct* every three years will incorporate feedback from students via focus groups with student leaders, confidential consultations with the Sexual Misconduct Prevention and Response Officer, and an online survey to 'assess [student] familiarity with the policy'. University of Windsor, *Dealing with Sexual Assault and Sexual Misconduct*, <<http://www.uwindsor.ca/sexual-assault/>>. See also Centers for Disease Control and Prevention, *Preventing Sexual Violence on College Campuses: Lessons from Research and Practice* (18 June 2014), 10 <<https://www.justice.gov/ovw/page/file/909811/download>>.

³⁴⁰ *Sexual Violence and Harassment Action Plan Act (Supporting Survivors and Challenging Sexual Violence and Harassment)* SO 2016, c 2-Bill 132, above n 337.

³⁴¹ University of Ottawa, above n 337, 11–16.

³⁴² Queen's University, *Sexual Assault Prevention and Response, Report and Recommendations* (30 April 2015) 20 <<http://www.queensu.ca/studentaffairs/sites/webpublish.queensu.ca.vpsawww/files/files/SAPRWG%20final%20report%20for%20posting.pdf>>.

³⁴³ *Ibid*, 15–21.

Commission Regulations in India require each university and higher education institution to conduct a 'regular and half yearly review of the efficacy and implementation of their anti-sexual harassment policy'.³⁴⁴ Further, as part of a review process, Columbia University uses the data of reported incidents that it is legally required to collect to 'increase awareness of these reported incidents and their handling by the University' and to 'encourage discussion that helps to prevent' sexual assault and promote a campus culture of respect.³⁴⁵

The regular review of universities' sexual assault and harassment policies should be seen as part of 'system improvement' and as a means to ensure that their policies are facilitating student safety and wellbeing. Ideally, these reviews should be part of a university operational framework and should be undertaken by each university on a regular basis.

Alternatively, university sexual assault and harassment policies should be subject to an external review process conducted every two to three years, evaluated against a set of minimum standards or criteria. The TEQSA Threshold Standards and compliance mechanisms potentially offer a useful framework for this exercise.

7.3 Good practice responses: implementing an effective reporting and disciplinary framework

When designing the reporting and disciplinary framework and its various components, key features of which are addressed in the section above, universities should incorporate three operational considerations: facilitating student choice of the disciplinary process; ensuring natural justice for victims, alleged perpetrators and witnesses/bystanders; and clarifying the relationship between the university's complaints process and the criminal justice system.

7.3.1 Choice of disciplinary process

A report of a complaint of sexual assault can lead to a police investigation and possible criminal justice proceedings (see 7.2.2 above). For many victims of sexual violence, the prospect and visibility of a criminal trial and concerns about the consequences for the alleged perpetrator³⁴⁶ are considerable barriers to prosecuting a complaint via an external criminal procedure. Where students are keen to secure some form of accountability and sanction arising from a report of sexual violence via an internal disciplinary process, universities should provide them with options for the resolution of complaints that ensure the students exercise some control over the process.³⁴⁷

University disciplinary models tend to fall somewhere between a formal adversarial model and an

³⁴⁴ University Grants Commission, above n 74, s 3.2(5).

³⁴⁵ Columbia University, *Gender-Based Misconduct Prevention and Response, 2015–2016 Annual Report* (29 July 2016), 9 <<https://sexualrespect.columbia.edu/files/sri/content/gender-based-misconduct-prevention-and-response-2015-2016.pdf>>.

³⁴⁶ See Commission's report, above n 15, chapter 6.2 (d)(v), which states that undergraduate students did not seek support because they did not want to get the perpetrator into trouble.

³⁴⁷ The introduction to the University of Windsor's *Policy on Sexual Misconduct* acknowledges: 'The University of Windsor understands that survivors may wish to control whether or how their experience will be dealt with by the police and/or the University. Wherever possible, and subject to the University's legal obligations to investigate and/or take action, a survivor will retain this control.' See University of Windsor, *University of Windsor Policy on Sexual Misconduct* (1 September 2016) <http://www.uwindsor.ca/sexual-assault/sites/uwindsor.ca.sexual-assault/files/sexual_misconduct_policy_with_proceduresdec2016.pdf>.

informal hearing model, which may include the use of mediation. Under the former, disciplinary hearings are conducted in a manner more reflective of the criminal justice system, with the application of strict evidentiary rules and lawyers representing complainants and respondents. While formal hearings may be appropriate in more serious cases (for example, in cases of sexual assault and where expulsion may be imposed), they can alienate potential complainants, become costly and time-consuming if lawyers are involved in the process, and potentially disrupt the academic schedules and commitments of the parties. A more informal approach – which employs members of the university community with relevant expertise to assist complainants and respondents in lieu of legal counsel – may be more expeditious and less costly, and deliver an outcome that accommodates the needs and interests of both parties.

The Commission's report refers to some Australian universities that require the victim to attend a mediation or some other form of meeting with the alleged perpetrator.³⁴⁸ Several international university policies reviewed for this report utilise or offer mediation as part of their internal disciplinary model. Some policies suggest that students should participate in an informal process prior to escalating the complaint to a formal process, with the caveat that, for serious cases, the informal mechanism may be inappropriate and can be bypassed.³⁴⁹ In the US, guidance on the use of Title IX cautions against the use of mediation for sexual assault but permits its application in cases of sexual harassment.³⁵⁰

The University of Toronto's Code of Student Conduct provides that where 'possible and appropriate, informal resolution and mediation shall be used to resolve issues of individual behaviour before resort is made to formal disciplinary procedures' – importantly noting, however, that mediation may not be considered appropriate in cases involving 'serious allegations of violence', or when a complainant 'is vulnerable or either party does not wish to engage in the process'. The code expressly states that 'mediation is appropriate when both parties – the complainant and the respondent – agree to participate and when a mediated solution will essentially satisfy any University interest in the matter'.³⁵¹

Student complainants of sexual harassment at the University of Cape Town may elect to use formal or informal proceedings. An informal procedure takes the form of a discussion between the two parties facilitated by a case manager and a Sexual Harassment Advisor. It is strictly confidential and non-prejudicial, and does not oust the option of a formal disciplinary proceeding.³⁵²

³⁴⁸ Commission's report, above n 15, chapter 6.2(d)(x) and 6.3(f)(viii).

³⁴⁹ University of Manchester, *Dignity at Study and Work Procedure for Students* (October 2014) 7–9 <<http://documents.manchester.ac.uk/display.aspx?DocID=22733>>. See also University of Oxford, above n 304, which states: 'Criminal Misconduct: If a criminal offence has been committed the harassment procedure may not be appropriate.'

³⁵⁰ In the US, Title IX guidance documentation states:

The grievance procedures may include voluntary informal methods (eg mediation) for resolving some types of sexual harassment complaints. However, the complainant must be notified of the right to end the informal process at any time and begin the formal stage of the complaint process. In cases involving allegations of sexual assault, mediation is not appropriate.

US Department of Education, Office of Civil Rights, *Know Your Rights: Title IX Prohibits Sexual Harassment and Sexual Violence Where You Go to School* <<https://www2.ed.gov/about/offices/list/ocr/docs/title-ix-rights-201104.pdf>>.

³⁵¹ *Ibid*, 9, 15.

³⁵² Formal disciplinary proceedings for sexual harassment at the University of Cape Town involve a disciplinary tribunal where allegations must be reported to the Vice-Chancellor or nominee. See University of Cape Town, *The University of Cape Town Sexual Harassment Policy* (18 February 2008) <http://www.sart.uct.ac.za/sites/default/files/image_tool/images/388/Get_Information/>.

Although mediation can offer the benefits of accommodating the interests and needs of the parties regarding process and outcome, it may risk being perceived by victims as a less rigorous means for securing an expeditious resolution of a complaint and possibly allowing a compromised outcome for an alleged perpetrator. From an institutional perspective, a decentralised, informal or ad hoc approach to resolution can also risk undermining the objectives of monitoring cases of campus sexual violence and ensuring consistent outcomes.

Ensuring ‘appropriate consistency of [process] and outcomes’ across an institution is an issue that arises in the context of university residential colleges, which may have devised their own methods of resolution of complaints of sexual assault and harassment based on the particular features or traditions of a college environment. Differences in approach between college and university disciplinary processes can be confusing and give rise to perceptions of ‘in-house justice’. In the interests of transparency, fairness and consistency, intra-university models of disciplinary processes must be standardised and must clearly articulate the circumstances when a matter may be addressed or resolved under a college procedure or referred for determination to a central university committee or panel.

Ultimately, any process for resolution must be clearly delineated and based on established principles and procedures, setting out a timeframe, a description of the process, and a range of potential outcomes. With choices of disciplinary processes – informal or formal – clearly determined and documented, a victim is better placed to make their own informed choice, where appropriate, as to how they wish their complaint to proceed. However, a choice of process should not be construed as an invitation to apply an ad hoc process designed to meet the specific circumstances of a complaint.

7.3.2. Ensuring natural justice for victims, alleged perpetrators and witnesses/bystanders

Good practice requires that notions of fairness and transparency inform university policies on sexual assault and harassment in their application to the victim, the alleged perpetrator and witnesses, and that parties are accorded fair treatment and appropriate support throughout the process.

Victim

Some universities have adopted a ‘victim or survivor-centred’ approach when drafting sexual violence policies³⁵³ that prioritise ‘the realities, needs, and decisions of those who have been assaulted ... [such] that support is not compromised by investigatory processes’.³⁵⁴ This approach seeks to ensure that victims have a choice in deciding how they wish to proceed with their complaint, and that they will be advised about the various stages of the investigation and the outcome. The approach also acknowledges that in limited, exceptional circumstances, a university may have to report an incident to the police against a victim’s wishes in order to ensure the safety

Policies/UCT%20Sexual%20Harassment%20Policy.pdf>; University of Cape Town, *University of Cape Town General Rules and Policies* (2015) <<https://www.uct.ac.za/downloads/uct.ac.za/apply/handbooks/Handbook%203%20General%20Rules%20and%20Policies2015.pdf>>.

³⁵³ Stephanie Sirois, ‘UNB (University of New Brunswick) Brings in “Survivor-Centred” Approach for Sexual Assault Reports’, *CBC Reports*, 9 June 2016 <<http://www.cbc.ca/news/canada/new-brunswick/sexual-assault-policy-unb-campus-1.3624854>>.

³⁵⁴ University of British Columbia Sexual Assault Panel, *Sexual Assault at the University of British Columbia: Prevention, Response, and Accountability* (June 2016), 12 <<http://equity2.sites.olt.ubc.ca/files/2016/09/USAP-Report-20-June-Submitted.pdf>>.

of the wider community or to comply with legal obligations. Additionally, the circumstances in which confidentiality cannot be guaranteed may need to be clarified – for example, disclosure of the victim’s identity and allegations in order to ensure that fairness and due process are applied to the alleged perpetrator.

Alleged perpetrator

Alleged student perpetrators of sexual assault and harassment should receive guidance and support from the university throughout the disciplinary process and, importantly, should be fully advised of the case against them in a timely manner to enable the preparation of a response. Universities that fail to apply principles of due process at all stages of an investigation and hearing in relation to an alleged perpetrator may confront the prospect of litigation.³⁵⁵

The University of St Andrews (UK) provides a comprehensive *Guidance for Students Accused of Sexual Misconduct* on its website, noting that ‘being accused of sexual misconduct can be a traumatic experience for anyone’ and that the ‘University’s Duty of Care extends to both alleged victims and alleged perpetrators of sexual misconduct’.³⁵⁶ Similarly, the University of Kansas student affairs website includes a comprehensive section entitled ‘Understanding the Accused Student’, which provides information for panellists hearing cases of university sexual violence, including a discussion of the factors that may contribute to the violence, such as ‘sex-role socialization, lack of sanctions for abuse, male peer group support, pornography, all-male membership groups such as fraternities and sports teams’.³⁵⁷

Witnesses/Bystanders

Fostering an environment that encourages the reporting of sexual assault and harassment requires policies that specifically address issues of victimisation, threats or retaliation.³⁵⁸ Such provisions are particularly relevant given the risks that witnesses and bystanders may confront in intervening in, seeking to prevent, and reporting unlawful and harmful conduct. In its report *Bystander Approaches to Sexual Harassment in the Workplace*, the Australian Human Rights Commission recommends that ‘organisations should expressly communicate to employees that bystanders who report complaints will be protected from victimisation and [should] publicly demonstrate disciplinary measures if victimisation does occur’. However, the Commission also points out that ‘organisations which encourage bystanders to be proactive in responding to sexual harassment should recognise [the] legal risks’ that may be incurred where circumstances are such that intervention may not be prudent or safe to intervene.³⁵⁹

³⁵⁵ *X v University of Western Sydney* [2014] NSWSC 82.

³⁵⁶ University of St Andrews, *Guidance for Students Accused of Sexual Misconduct* (September 2015) <<https://www.st-andrews.ac.uk/students/advice/personal/sexual-misconduct/accused-sexual-misconduct/>>.

³⁵⁷ See University of Kansas, *Understanding the Accused Student* <<https://studentaffairs.ku.edu/understanding-accused-student/>>.

³⁵⁸ The University of Windsor’s *Policy on Sexual Misconduct* contains a clear articulation of the rights and options available to bystanders or witnesses of sexual violence. It provides that bystanders ‘may choose to report acts of sexual misconduct that they witness or where they perceive a specific pattern of sexual misconduct which they believe is creating a hostile or toxic environment where they work, study or live’. The policy also provides that it ‘is contrary to this Policy for anyone to retaliate, engage in reprisals or threaten to retaliate against a complainant ... or other individual’ and that ‘such conduct will be subject to sanctions and/or discipline’. University of Windsor, above n 347, ss 7.1, 7.2.1, 8.3.1 and 8.3.2.

³⁵⁹ Australian Human Rights Commission, *Bystander Approaches to Sexual Harassment in the Workplace*, pt 5.2 <<https://>>.

With increased recognition that addressing sexual assault and harassment requires individual, organisational and community input,³⁶⁰ it is imperative that universities ensure that their sexual assault and harassment policies and any bystander training programs introduced as part of university prevention strategies (discussed further in chapter 9) clearly stipulate and afford appropriate measures of protection to bystanders and those who call out unacceptable conduct.

7.3.3 Clarifying the relationship between the university's complaints process and the criminal justice system

*You have the right to make a report to University Police or Campus Security, local law enforcement, and/or State Police or choose not to report; to report the incident to your institution; to be protected by the institution from retaliation for reporting an incident; and to receive assistance and resources from your institution.*³⁶¹

A common response by universities to disclosures of student sexual violence is to frame the issue as a police matter. As mentioned above, in cases of sexual assault in particular, universities might advise students that only the police, and not the university, are competent to respond to a complaint, or that 'only once a police complaint is made and/or a criminal conviction is secured' can a university take action.³⁶² Irrespective of whether a student victim of sexual violence wishes to report the matter to the police – and many are reluctant to do so – this information tends to reflect confusion within university administrations about the dual nature of these complaints: that cases of sexual assault are 'both a criminal matter, and a misconduct matter'.³⁶³ Although the outcome of a criminal investigation and hearing may be instructive in determining the approach of a university disciplinary procedure, the facts of, or circumstances surrounding, a report of sexual assault may require a university to put in place interim measures to support the students affected, and to make an expedited finding in accordance with its own policies and procedures prior to the outcome of a criminal investigation and potential hearing.

The university disciplinary process is an internal process distinct from that of the external criminal justice system. The former is an administrative matter involving breaches of university policy potentially leading to sanctions, including expulsion. Conversely, the criminal justice system – at least within Australia, the US, Canada and the UK – is an external adversarial process, where the guilt of an accused is established via a higher evidentiary burden of proof (allegations must be proven beyond reasonable doubt). Criminal law sanctions vary depending on the offences charged and may include a term of imprisonment.

In cases of sexual assault, some universities automatically refer the matter to the police for

www.humanrights.gov.au/publications/part-5-legal-and-organisational-implications-bystander-approaches-sexual-harassment#Heading904>.

³⁶⁰ Recognising that the prevention of university sexual violence is a collective societal responsibility, the White House launched a campaign, *It's On Us*, in 2014. See Tanya Somander, *President Obama Launches the 'It's On Us' Campaign to End Sexual Assault on Campus* (19 September 2014) The White House <<https://obamawhitehouse.archives.gov/blog/2014/09/19/president-obama-launches-its-us-campaign-end-sexual-assault-campus>>.

³⁶¹ SUNY, *Sexual Assault & Violence Response (SAVR) Resources Website* <<https://www.suny.edu/violence-response/>>.

³⁶² EROC Australia, above n 84, 29.

³⁶³ *Ibid* 30.

investigation and possible prosecution, taking the view that criminal conduct should generally be referred to the police, rather than dealt with under a university's complaints process.³⁶⁴ This view was prevalent among several universities in the UK that relied on the so-called Zellick Guidelines, which provided guidance to universities on managing situations where student conduct may constitute a criminal offence. The guidelines recommended that universities desist from taking any disciplinary action unless the victim had made a report to the police. The guidelines are, however, under review in light of subsequent legislative changes (including the introduction of the *Human Rights Act 1998* (UK)) and recognition that the guidelines failed to adequately reflect that universities have a duty of care to students and focused, perhaps unduly, on 'protecting institutions rather than supporting students'.³⁶⁵

To avoid ambiguity, ensure consistency and prevent disjointed responses to sexual assault and harassment, the distinction between a university's complaints system and internal disciplinary process and the criminal justice system should be clearly visible and articulated in university sexual assault and harassment policies. Students should be advised on how the criminal justice process is distinct from, but may impact upon, a university's internal disciplinary process – for example, if an incident is reported to the police by the university or a student, any internal processes may have to be suspended pending completion of the criminal process.³⁶⁶ This is important, as the potential exists for an internal investigation process to contaminate the external criminal process, and vice versa. Interference in either may result in proceedings being suspended or abandoned and may also have an impact on the rights of the accused to a fair hearing.³⁶⁷

Columbia University's *Gender-Based Misconduct Policy* states that given that the 'University and criminal justice systems work independently from one another ... [l]aw enforcement authorities do not determine whether a violation of this Policy has occurred', further pointing out that 'the criminal justice system uses different standards related to proof and evidence'.³⁶⁸ The University of Toronto's *Students' Companion to the Code of Student Conduct* notes that '[w]hile some allegations are so serious they must be referred to the police,³⁶⁹ others might be handled through an internal resolution. By using its own internal mechanisms, the University is able to apply internal community values and, in appropriate circumstances, to draw upon non-traditional or restorative means of resolving a complaint'.³⁷⁰ An internal system might also offer the benefits of expeditious action, accessibility, privacy and 'an effective remedy to the aggrieved complainant as quickly as possible so that s/he

³⁶⁴ See eg University of Oxford, above n 225, [17].

³⁶⁵ See Universities UK, above n 32, 56–57.

³⁶⁶ If the alleged perpetrator is found not guilty by a criminal court, it does not preclude the university from applying its own disciplinary process against them.

³⁶⁷ Sheehy and Gilbert, above n 223, section E – A protocol for police involvement; Pinsent Masons, *Guidance for Higher Education Institutions: How to Handle Alleged Student Misconduct Which May Also Constitute a Criminal Offence*, Universities UK, 9–12 <<http://www.universitiesuk.ac.uk/policy-and-analysis/reports/Documents/2016/guidance-for-higher-education-institutions.pdf>>.

³⁶⁸ Columbia University, above n 225, 8.

³⁶⁹ On receipt of a complaint, some universities will conduct a risk assessment to consider any potential risks to the victim, other students or the institution. See eg University of St Andrews, *Sexual Misconduct Policy Statement* <<https://www.st-andrews.ac.uk/students/advice/personal/sexual-misconduct/policy-statement/>>.

³⁷⁰ University of Toronto, above n 303, 9.

can continue to study and develop without further impediments³⁷¹ – an option that may be preferable for international students in particular.

In deciding how best to approach this issue, Australian universities should be guided primarily by requirements under relevant state and federal legislation, especially in relation to reporting obligations that may exist under state or territory criminal legislation.³⁷² Policy considerations, including concerns about dissuading victims from coming forward, should give way to reporting obligations under law – particularly in circumstances where further criminal conduct has been, or may be, perpetrated. Victims should not be shielded from the knowledge that, in certain circumstances, if they make a complaint of sexual assault to the university, the matter may be referred to the police.

Interim measures

Finally, whatever the process adopted for the resolution of a complaint of sexual assault or harassment, interim measures will generally need to be implemented by a university pending an informal resolution of a complaint, the conclusion of an internal disciplinary process or criminal investigation and hearing.³⁷³ Sexual assault and harassment policies should specify that such measures (for example, suspension from college or class, or exclusive or prohibited access to university facilities) will be applied on a case-by-case basis, depending on the nature of the conduct under investigation. Additionally, the measures will be reasonable and proportionate, set for fixed periods of time, and subject to review, if required.³⁷⁴ Policies should also clarify that interim measures are a precaution taken by a university in limited circumstances to protect the victim or others and to facilitate a comprehensive investigation; they are not to be interpreted as anticipating or revealing the outcome of either the internal university or external criminal process.³⁷⁵

³⁷¹ University Grants Commission, above n 35, 5–6.

³⁷² Chapter 3 of this report considers s 316 of the *Crimes Act 1900* (NSW), which states that any person who fails to report certain information relating to a 'serious indictable offence' to the police without a reasonable excuse may face two years' imprisonment. A 'serious indictable offence' is any offence that is punishable by imprisonment for five years or more, such as sexual assault and indecent assault.

³⁷³ The Sexual Harassment and Safety Office at the University of the Witwatersrand provides victims of sexual assault or harassment with a range of interim measures, including 'no-contact orders; change of university student residence; change of academic, classes and academic concessions; special leave (staff) or leave of absence (students), where appropriate'. University of the Witwatersrand, above n 158, 12.3 i–iii.

³⁷⁴ Pinsent Masons, above n 367, 8.

³⁷⁵ For an example of a clear policy explaining interim measures, see University of Toronto, *Code of Student Conduct* (14 February 2002), section 9 <<http://www.governingcouncil.utoronto.ca/Assets/Governing+Council+Digital+Assets/Policies/PDF/ppjul012002.pdf>>.

Underlying principles

When designing a reporting and disciplinary framework to address complaints of sexual assault and harassment, universities should incorporate the following operational considerations:

- Students should be afforded a choice of disciplinary process that most appropriately serves their needs, and should be strongly advised that in cases of serious allegations of violence, informal disciplinary procedures are not considered appropriate.
- The reporting and disciplinary framework should be founded on principles of natural justice that recognise the rights of, and provide safeguards for, the victim, the accused and any witnesses/bystanders.
- The university disciplinary process (which concerns breaches of university policy) should be clearly distinguished from the criminal justice process.

An **effective reporting and disciplinary framework** should include the following features:

- Equipping 'first responders' to respond to first disclosures of sexual assault and harassment with the provision of trauma-informed sexual assault training.
- Ensuring that sexual assault and harassment policies and procedures are clearly signposted and embedded in induction training for all staff, students and others affiliated to, or engaged by, the university, including contractor staff.
- Implementing clear, simple, effective and centralised reporting mechanisms, with options for online, anonymous confidential reporting. The distinction between the initial disclosure of an incident and reporting for the purposes of investigation and determination must be clearly outlined in policies on sexual assault and harassment, particularly in cases where a report may be made to the police.
- Enforcing a fair, expeditious and appropriate resolution of complaints of sexual assault and harassment and disseminating de-identified disciplinary outcomes to the university community.
- Implementing and maintaining a robust records management system that enables the collation and storage of incident reports received from different university reporting sites (such as security, health or counselling services, and residential colleges) and analysis of the data to establish patterns of prevalence, the efficacy of policies, and the adequacy of support services and prevention measures, and to identify environmental and other risks.
- Conducting regular evaluation and, where required, revision of policies and procedures in consultation with student organisations and relevant internal and external agencies.

8. Student support services

8.1 Key findings by the Australian Human Rights Commission

Chapter 2 of this report refers to the severe and enduring impact of sexual assault and harassment on victims. The Commission's report provides concerning accounts of the deleterious effects of sexual assault and harassment on individual students and the impact both on their mental health and on their studies, careers and social life.³⁷⁶ One victim quoted in the Commission's report described this impact: "After the incident, I feel hollow and empty inside. I hated myself, believed the incident was my fault, and was severely depressed."³⁷⁷ The anxiety of victims can be ongoing and can significantly affect their ability to continue their academic life:

I've only seen him once ... I am sure I will see him again in the next three and a half years ... I get anxious each time I leave the College (i.e. when I go to class). It is horrible to be constantly on edge, and I don't know when it will end.³⁷⁸

Following an incident of sexual assault or harassment, victims have wide-ranging support requirements, spanning their immediate safety and medical needs, legal advice, academic support and counselling care.³⁷⁹ A common concern of victims of sexual assault and harassment identified by the Commission's report is that students often do not know what support services are available or how to access them. Others reported that there are long waiting periods for appointments, with one student stating that there was a two-month wait-list to access support services at their university.³⁸⁰

The Commission's report also states that these services do not cater to different student cohorts, particularly CALD or international students, and highlights concerns by some students that there was a 'lack of specialised services for students who speak English as a second language (ESL) or

³⁷⁶ Commission's report, above n 15, chapter 4.

³⁷⁷ Ibid chapter 4(a).

³⁷⁸ Ibid chapter 4(b).

³⁷⁹ See eg EROC Australia, above n 84, 15–20.

³⁸⁰ Commission's report, above n 15, chapter 6.3(f)(xii) and chapter 8.4. Victims at some universities reportedly face wait-times of up to four weeks before securing access to counselling services. See Eryk Bagshaw, 'Rape Victims Face Four-Week Wait for Counselling at Some Universities', *Sydney Morning Herald*, 17 May 2017 <<http://www.smh.com.au/federal-politics/political-news/rape-victims-face-fourweek-wait-for-counselling-at-some-universities-20170516-gw5qf4.html>>.

students with disabilities'.³⁸¹ As one student stated in their online submission to the Australian Human Rights Commission:

*The Counselling Centre (and University administration in general) should publicise that their services are also for people that are international, queer, male-identifying, students of colour, ESL students ... My frustration for not talking with someone who could speak my same mother tongue made me have many 'lost in translation' misunderstandings with my counsellor.*³⁸²

In addition, support services may also need to accommodate the needs of students associated with victims of sexual assault trauma in recognition of the growing evidence regarding the vicarious trauma experienced by bystanders, and friends and associates who provide non-professional advice to victims.³⁸³

8.2 Good practice responses

This chapter considers issues related to the provision of support for student victims of sexual assault and harassment. Within this context, the term 'support' encompasses not only remedial or therapeutic support, such as medical and counselling services, but other forms, including academic and legal support.

Concerns around student awareness of, and confidence in, the support services available to them at universities may be addressed by improving the accessibility of information about the services, providing adequate staffing to meet demand, and – for universities with a large international student cohort – having support available in a range of languages.

8.2.1 Adequate funding for support services

Given the substantial and sustained negative impact that sexual assault and harassment have on victims – in relation to both the psychological and medical wellbeing of students and their academic progress – it is vital that universities give due consideration to the issue of sustainable funding of support services to enable a holistic and integrated approach.

The Commission's report highlights barriers to accessing support services that include a lack of awareness of the service, lengthy waiting times, and a lack of specialised support for specific cohort groups, including CALD.³⁸⁴ As is mentioned in chapter 4, adequate resourcing of these services demands an appreciation by universities of the specific needs of victims of sexual assault and harassment. The provision of sexual assault-related trauma training for medical practitioners and counsellors, appropriately trained interpreters for CALD students and international students, and staff who are trained to be sensitive and responsive to the needs of students with disability and those who are LGBTIQ, are all essential to addressing the range of support required by victims of sexual violence.

³⁸¹ Commission's report, above n 15, chapter 6.3(f).

³⁸² Ibid chapter 6.3(f)(xii).

³⁸³ EROC Australia, above n 84, 9, citing Victoria L Banyard et al, 'Friends of Survivors: The Community Impact of Unwanted Sexual Experiences' (2010) 25(2) *Journal of Interpersonal Violence* 242.

³⁸⁴ Commission's report, above n 15, chapter 6.3(f) and (xii)

Resources should also be made available to ensure that the design and location of support services reflect and incorporate the needs of victims of sexual violence to ensure their privacy and confidentiality and a sense of safety and security. Where possible, medical and counselling services should be physically co-located for ease of access by victims. In some cases, this might also facilitate effective co-management of physical harm and trauma.

As many incidents of sexual assault and harassment may occur outside of usual working hours, resources should be allocated to the provision of 24-hour support within university medical and counselling services (see 8.2.3 below). There may also be particular times in the academic year (such as O-week)³⁸⁵ or specific events that necessitate an increase in available support services. Resources should be allocated within university budgets to address such exigencies.³⁸⁶

8.2.2 Integrated sexual violence support service

*We know from our consultations how important it is to have a single place to turn for support and information.*³⁸⁷

The existence of fractured support services that are hard to access – with students recounting their experiences multiple times to staff at different points of contact – underscores the need for universities' '[s]ystems and service responses' to sexual assault and harassment to offer 'co-ordinated or "joined up" pathways' that integrate practitioners 'with specialist knowledge of the dynamics and impacts of sexual assault and abuse [and] other therapeutic and non-therapeutic providers'.³⁸⁸ A common request, particularly from student organisations, has been for universities to establish a sexual violence service or designated sexual assault support staff on campus to specifically address reports of sexual violence.³⁸⁹ This approach is in line with recommendations of university taskforces and with practice in the US,³⁹⁰ Canada and South Africa, which recognises the need for a coordinated and integrated support service.

The Office of Sexual Assault Prevention & Response (OSAPR) at Harvard University provides 'a

³⁸⁵ Emily Baker, 'Canberra Rape Crisis Centre Records "Dramatic increase" in Student Contacts', *Canberra Times*, 28 February 2017 <<http://www.canberratimes.com.au/act-news/canberra-rape-crisis-centre-records-dramatic-increase-in-student-contacts-20170227-gum51q.html>>; Nina Funnell, 'The "Red Zone": O-week a Danger Time for Female University Students', *Newcastle Herald*, 7 March, 2017 <<http://www.theherald.com.au/story/4512864/red-zone-week-time-for-universities-to-act/>>.

³⁸⁶ In anticipation of the release of the Commission's report, EROC Australia recommended the implementation of five action points by universities to 'ensure that university communities [were] equipped to respond to the impact that this report may have on students survivors and student representatives', including the provision of sufficient counsellors trained in trauma-specialist counselling. See EROC Australia, *What Universities Can Do Now* <<http://www.endrapeoncampusau.org/what-universities-can-do-now>>.

³⁸⁷ Terry McQuaid, Executive Director of Personal Safety, High Risk, Sexual Violence Prevention and Support, University of Toronto, quoted in University of Toronto, *Update on U of T's Tri-Campus Sexual Violence Prevention and Support Centre* (16 March 2017) <<https://www.utoronto.ca/news/update-u-t-s-tri-campus-sexual-violence-prevention-and-support-centre>>.

³⁸⁸ Commission's report, above n 15, chapter 8.3, quoting Australian Institute of Family Studies, *Current Approaches to Preventing and Responding to Sexual Assault: A Rapid Evidence Assessment*, Women NSW, NSW Government <https://www.women.nsw.gov.au/_data/assets/pdf_file/0010/389134/rapid-review-sexual-assault.pdf>.

³⁸⁹ EROC Australia, above n 84, 47, regarding a recommendation to individual universities to create sexual assault support centres, or designated sexual assault support staff with expertise and training in sexual assault and trauma.

³⁹⁰ American Association of University Professors, Committee on Women in the Academic Profession, above n 60, 369; Stanford University, above n 216, 7–8.

confidential space' to 'ensure a survivor-centered, multi-faceted approach to advocacy services and primary prevention', where every member of staff is a certified rape-crisis counsellor. In addition to its education and outreach work, the OSAPR provides counselling options, academic and accommodation support, medical and legal accompaniments, support in pursuing legal or administrative actions, and referral to on/off campus resources.³⁹¹

Concordia University's Sexual Violence Policy established the Sexual Assault Resource Centre as its 'primary resource for support and response' in cases of sexual violence.³⁹² The Centre provides crisis intervention and support, advocacy for survivors accessing on- and off-campus redress, and an accompaniment for survivors to medical and police services.³⁹³ The university has also created the position of Sexual Assault Resource Centre Coordinator to act as the 'lead responder' in cases of reported sexual violence, overseeing case management and addressing internal academic needs of the victim, such as securing a change in course or class scheduling or submission dates for work assignments.³⁹⁴ The Coordinator chairs the Sexual Assault Response Team, which meets 'on an urgent and priority basis in the event of a reported incidence of sexual violence ... to provide a coordinated and appropriate response'.³⁹⁵ The University of Toronto has established a Sexual Violence Prevention and Support Centre at all three of its campuses in 2017. This tri-campus centre assists in the triage of disclosures and/or reports, and the coordination of support for students, faculty or staff impacted by sexual violence.³⁹⁶

The Gender Equity Office at the University of the Witwatersrand in South Africa is a 'holistic and integrated office' that:

1. Collects and tracks all gender-based harm (GBH)-related complaints across the university and analyses trends to inform and improve intervention initiatives;
2. Provides a safe and confidential space with full-time counselling support to complainants and victims of GBH;
3. Confidentially advises complainants and victims of GBH of their options;
4. Oversees an independent disciplinary procedure for formal complaints against staff or students accused of GBH;
5. Engages actively in advocacy around gender equality.³⁹⁷

³⁹¹ Office of Sexual Assault Prevention & Response, About, Harvard University <<http://osapr.harvard.edu/>>.

³⁹² Concordia University, above n 219, 4.

³⁹³ Concordia University, Sexual Assault Resource Centre, *About Us* <<https://www.concordia.ca/students/sexual-assault/about.html>>.

³⁹⁴ Concordia University, above n 219, 5.

³⁹⁵ *Ibid* 7.

³⁹⁶ University of Toronto, *Governing Council Approves Policy on Sexual Violence and Sexual Harassment* (16 December 2016) <<https://www.utoronto.ca/news/governing-council-approves-policy-sexual-violence-and-sexual-harassment>>. See also University of Toronto, above n 387. Similarly, in response to recommendations from its *Sexual Assault Prevention and Response Working Group*, Queen's University created the position of a dedicated Sexual Violence Prevention and Response Coordinator. The coordinator will be located within the university's new Sexual Violence Support Office: 'Queen's to establish new position dedicated to sexual violence prevention, education and response', *Queen's Gazette*, 2 December 2015 <<http://www.queensu.ca/gazette/stories/queen-s-establish-new-position-dedicated-sexual-violence-prevention-education-and-response>>. The University of New Brunswick has employed two 'Sexual Assault Support Advocates' as part of the university's new sexual assault policy. The advocates are the recommended first point of contact for victims of sexual assault. They are tasked with providing counselling and with the development of educational resources and continual policy improvement. University of New Brunswick, *Sexual Assault Policy* (1 June 2016), 5.2.3 <http://www.unb.ca/fredericton/vp/_resources/documents/sexualassaultpolicy.pdf>.

³⁹⁷ University of the Witwatersrand, Gender Equity Office, *About Us* <<https://www.wits.ac.za/students/geo/about-us/>>.

The advantage of an integrated service is that it provides an integrated range of support to students (and staff), including:

- crisis intervention and support for individuals in the immediate aftermath of an incident;
- accompaniment of victims to hospitals or specialist medical services;
- advice on various reporting processes via the university or criminal justice system and accompaniment of victims who wish to report their experience to the police or to submit a complaint via a university complaints process;
- advocacy for victims to access different on- and off-campus support, as required, including academic support (such as special consideration) and accommodation support;
- provision of general information on support services and referrals to specialist support services and trauma counselling; and
- provision of resources and sexual violence prevention education on sexual violence, harassment and related topics.

Additionally, an integrated service would be staffed by people with expertise and training in sexual assault and trauma³⁹⁸ and detailed knowledge of a university's complaints process. As part of their training, staff would be skilled in responding sensitively and appropriately to people from diverse cultural backgrounds and those who identify as trans and gender diverse. The services offered would be available to students via the provision of face-to-face and telephone consultations, with the availability of a language or sign language interpreter where necessary.

Having a unified or integrated sexual assault support service can also improve the visibility and accessibility of these services by creating 'a single point of entry for integrated and holistic sexual assault response, support, advising, counselling, advocacy, and case management service'.³⁹⁹

It also enables a coordinated response, allows for efficient case management, and reduces unnecessary duplication of roles.

The effective functioning, benefits and range of services offered by an integrated service are, however, reliant on maintaining optimum levels of appropriately trained staff. Some of the integrated support services reviewed appear to employ only one or two staff to service an entire campus, or often multiple campuses, and others rely heavily on student volunteers.⁴⁰⁰

While the establishment of an integrated sexual assault service for each university is clearly desirable, the resources required to establish and staff this model can be significant. An alternative model is the establishment of a single point of contact that relies on partnerships with internal and

³⁹⁸ All support staff at the University of Oxford have received substantial professional training relating to trauma, including specific training on sexual violence: University of Oxford, *Sexual Violence: Response and Prevention* <<https://www.ox.ac.uk/students/welfare/sexual-violence?wssl=1>>. At Harvard University, every staff member at the Office of Sexual Assault Prevention & Response, is a certified rape crisis counsellor: Harvard University, Office of Sexual Assault Prevention & Response, *About* <<https://osapr.harvard.edu/pages/about>>. The American College Health Association toolkit, *Shifting the Paradigm: Primary Prevention of Sexual Violence* (August 2008), encourages student health services to integrate 'screening questions for sexual violence into **all** patient history forms', given that 'survivors of sexual violence often seek health/wellness services secondary to an incident but only reveal the experience to an individual if asked at the time of the visit': <http://www.acha.org/documents/resources/ACHA_PSV_toolkit.pdf>.

³⁹⁹ Queen's University, above n 342, 50.

⁴⁰⁰ Durham University, above n 298; Sexual Assault Center of the McGill University Students' Society (2017) <<http://www.sacomss.org/wp/>>.

external agencies with relevant expertise to deliver specialist sexual assault support services to victims. Under such a model, external agencies provide easily accessible specialist support to students on campus. Durham University has appointed a Student Support and Training Officer (Sexual Violence and Misconduct) with responsibility for policy development, case management, student support, and prevention and training. This officer is the main point of contact for students, 'working in partnership with colleges, the Counselling Service and other internal and external agencies, to ensure appropriate support is available to any students and staff who report experiencing sexual violence or misconduct'.⁴⁰¹ The university also funds staff from the local rape crisis centre to provide support on campus two days and one evening per week, in addition to the existing resources provided by the university counselling service.⁴⁰²

8.2.3 Support helplines

The existence of an integrated sexual violence support service or an individual support officer on university campuses is key to servicing the multiple and ongoing needs of victims of sexual assault and harassment. Often, however, students – particularly in the immediate aftermath of a sexual assault – require urgent assistance and may be at an off-campus location, or may need advice and support after hours or on weekends. In addition, they may feel uncomfortable with the prospect of a face-face interaction with university staff or agencies.

Some international universities offer a 24/7 support hotline staffed by fully trained rape crisis counsellors.⁴⁰³ At the University of Cape Town, the Sexual Assault Response Team offers a free 24-hour hotline for students who have been raped or sexually assaulted, which includes the provision of immediate trauma support and advice and details about transport to and from the local hospital, where students may receive medical help, trauma counselling and an (optional) forensic examination.⁴⁰⁴ Other universities provide support via a helpline that is staffed by volunteer students with no specialised training. The helpline serves as a non-advisory, non-directive 'listening service', with students trained in 'listening skills'.⁴⁰⁵

The need for a dedicated helpline for university students who are victims of sexual assault has been addressed in the US by RAINN (Rape, Abuse and Incest National Network), the largest sexual violence organisation in the country, which has partnered with higher and secondary education institutions to develop 'around the clock crisis intervention support via a tailored response hotline'.⁴⁰⁶ In Australia, in anticipation of the Commission's report on the national student survey, university case workers, victim advocates, NUS and EROC Australia have called for the establishment of a centralised national hotline for student victims of sexual violence, to be staffed by trauma-informed counsellors.⁴⁰⁷

⁴⁰¹ Email from Durham University Student Support and Training Officer (Sexual Violence and Misconduct) to Kirsten Keith, 19 April 2017.

⁴⁰² Durham University's Sexual Violence Taskforce, above n 63, 12. See also Ryan Gould, 'Appointment of Full-Time Sexual Violence Officer is "First of Its Kind in the Country"', *Palatinate*, 23 December 2016 <<http://www.palatinate.org.uk/appointment-of-full-time-sexual-violence-officer-is-first-of-its-kind-in-the-country/>>.

⁴⁰³ See eg Harvard University, Office of Sexual Assault Prevention & Response, *24 Hour Hotline* <<https://osapr.harvard.edu/24-hour-hotline>>.

⁴⁰⁴ Sexual Assault Response Team, *24-hour-hotline*, University of Cape Town <<http://www.sart.uct.ac.za/sart/get-help/24-hour-hotline>>. If face-to-face counselling is required, students are encouraged to contact Rape Crisis, an external organisation that offers a free and confidential 24-hour counselling service.

⁴⁰⁵ Durham University, above n 298.

⁴⁰⁶ RAINN, *RAINN's Demonstrated Experience* <<https://www.rainn.org/rainn-demonstrated-experience>>.

⁴⁰⁷ Bagshaw, above n 380; see also EROC Australia, above n 84; Fair Agenda, *Uni's: Stop Leaving Rape Survivors Without*

8.2.4 Academic support

In addition to the physical and psychological impact of sexual assault, its effects can also have an impact on a student's education, including their capacity to concentrate or learn, engage with subject material, participate with other students in class discussions and assignments, and meet deadlines.⁴⁰⁸ The Commission's report notes that, in some instances, student victims of sexual assault and harassment have dropped out of their degree as a result of sexual assault or harassment.⁴⁰⁹

A key issue in the Commission's report identifies the failure of universities to provide adequate support services and assistance that took into consideration the psychological impacts of sexual assault or harassment on students.⁴¹⁰ The report highlights that numerous students experiencing mental health issues because of a sexual assault were denied special consideration for assignments or examinations.⁴¹¹

The submission to the Australian Human Rights Commission by EROC Australia highlights the difficulties associated with securing extensions, special consideration and other forms of academic assistance:

Survivors may also be embarrassed or hold confidentiality concerns about disclosing their survivor status to staff. Many universities require formal documentation, which forces survivors to disclose to additional people (such as GPs). This process can be humiliating for survivors, and some fail subjects or fall behind in their work, rather than go through that process.⁴¹²

The Sexual Assault Response Team at the University of Cape Town provides access to leave of absence and deferred examination forms on its website. Designated faculty staff are available to outline the process to students, assist them in completing the application, and initiate the special consideration process by the Student Records Office.⁴¹³

University policies that govern the application of special consideration to assignments and examinations may require amendment to reflect the potential impact of sexual assault and harassment on a student's academic progress. Similarly, staff reviewing applications for special consideration from victims of sexual violence should receive training in how best to address these requests and accommodate the victims' immediate or long-term academic needs. To this end, Durham University have recommended that student examiners be informed about the impact of sexual violence and trauma on student's academic work.⁴¹⁴

Adequate Support <http://www.fairagenda.org/uni_counselling>.

⁴⁰⁸ Commission's report, above n 15, chapter 4(b); EROC Australia, above n 84, 17.

⁴⁰⁹ Ibid chapter 4(b).

⁴¹⁰ Ibid chapter 6.3(f)(xii).

⁴¹¹ Ibid 6.3(f)(x) and chapter 8.3(a) and (b).

⁴¹² EROC Australia, above n 84, 18.

⁴¹³ Sexual Assault Response Team, *Leave of Absence & Deferred Examination*, University of Cape Town (17 May 2017) <<http://www.sart.uct.ac.za/sart/get-info/deferred-exams>>.

⁴¹⁴ Durham University's Sexual Violence Taskforce, above n 63, 10.

The impact of sexual assault and harassment on a student's academic life might also require assistance to reschedule class or tutorial times (in an effort to avoid contact with an alleged perpetrator), a change of accommodation, and/or the imposition of a 'no contact order'⁴¹⁵ – especially if the victim and alleged perpetrator reside in the same residential college. Residential colleges should have access to alternative accommodation to enable an expeditious change in living arrangements to minimise contact between the respective parties.

⁴¹⁵ See University of the Witwatersrand, above n 158, 12.3 i–iii.

Good practice pointers: support services

- The impact and needs (medical, psychological, legal and academic) of student victims of sexual assault and harassment warrant the establishment of an integrated sexual violence support service on university campuses that offer a range of services provided by staff trained in sexual assault-related trauma.
- For smaller universities, the model of establishing a single point of contact to provide advice, support and referrals may be a more viable alternative.
- A 24-hour telephone support service should be available to assist student victims of sexual assault or harassment after hours or on weekends, and to assist those who might be at an off-campus location (such as an overseas placement or work experience).
- University staff in student services (academic) must be appropriately briefed to recognise and facilitate requests from student victims of sexual assault and harassment to reschedule class or tutorial times and to expedite special consideration applications.
- College staff and students in leadership roles must be equipped to manage the needs of victims, friends/associates, bystanders and alleged perpetrators and, where necessary, to secure alternative accommodation to minimise contact between the respective parties.
- Given the significant impact of sexual assault and harassment on the physical and mental health of students, and the effect on their studies, careers and social life, the provision by universities of adequate and sustainable funding is critical to ensure appropriately designed, comprehensive and effective student support services that are staffed by sufficient numbers of specifically trained medical practitioners and counsellors.

9. Prevention

*For a campus to have a comprehensive approach, strategies should be in place to prevent violence as well as respond to violence after it has occurred.*⁴¹⁶

9.1 Key findings by the Australian Human Rights Commission

While robust, transparent and strictly enforced policies may help deter future incidents of sexual assault and harassment at university, any effective strategy addressing these issues requires the inclusion of prevention mechanisms.

The analysis of the national student survey and comparative international research suggests that a lack of student awareness in relation to definitions of sexual violence, as well as notions of sexual consent and respectful relationships, is fundamental to understanding the manifestation of sexual violence and, consequently, its prevention.

The Commission's report highlights numerous instances where students did not report their experiences because they did not think that the incident was serious enough, or they were unsure whether what they experienced would be considered proscribed conduct.⁴¹⁷ A student who was physically and sexually assaulted by a student whom she was dating did not report the incident to the university or the police because "I was not sure that it was [sexual] assault and whether anything could be done".⁴¹⁸

The lack of knowledge about the nature of the experience is similarly expressed in relation to a lack of understanding about the contours of consent⁴¹⁹ among students and the influence of alcohol as a factor in determining the presence or absence of genuine or affirmative consent.⁴²⁰

⁴¹⁶ Centers for Disease Control and Prevention, above n 339, 6.

⁴¹⁷ Commission's report, above n 15, chapters 7(c)(iii), 8.2 and 6.2(a), (d)(i) and (ix).

⁴¹⁸ Ibid chapter 6.2(d)(ix); Submission No 1648.

⁴¹⁹ The Hunting Ground Australia Project, submission to Australia Human Rights Commission, *University Sexual Assault and Sexual Harassment Project*, February 2017, 15 <<http://www.thehuntinggroundaustralia.com.au/wp-content/uploads/2017/06/The-Hunting-Ground-Australia-Project-submission-to-AHRC-University-Sexual-Assault-and-Harassment-Project.pdf>>.

⁴²⁰ Commission's report, above n 15, chapter 7(b)(ii); Submission No. 371: 'Things are done so uncritically, and to criticise them is to question "tradition". This sets up the college culture for the rest of the year as revolving around intense consumption of alcohol and "getting" sex. We are taught that to "score" is the most important thing, and given almost no information about consent.'

Analysis from the national student survey also indicates that there are deeply ingrained attitudes and cultures that facilitate – directly or indirectly – the commission of sexual assault and harassment. A common theme identified in the Commission’s report is that victim-blaming prevented students from reporting their experiences:⁴²¹

*I did not report the incident due to fear and guilt. I felt guilty because I thought I had not said ‘no’ enough or explicitly enough.*⁴²²

*I didn’t report the incident ... I felt that I was responsible for what had happened by being too drunk to look out for myself or remove myself from the situation effectively. Looking back on the situation now, I was far too drunk to be able to consent to any sexual activity. The guy should not have attempted to have sex with me, and the older residential advisers at the college should have intervened.*⁴²³

The Commission’s report also highlights attitudes that normalise sexual harassment, with students referring to experiences of disclosing or reporting incidents to friends or university staff only to be told that the incident was not serious and to ‘let it go’. As one student who had been sexually harassed recalled: “I once told a tutor about an incident and was told to see it as a compliment and asked what I was wearing.”⁴²⁴

While the implementation or upgrade of physical or environmental facilities – such as increasing campus security patrols, limited or security access to residential colleges, the installation of CCTV cameras, and better lighting – might deter the perpetration of some sexual violence on campus, the Commission’s report emphasises that strategies that challenge the underlying culture that facilitates or normalises sexual assault and harassment are essential to erode attitudes and conduct that are degrading and harmful.⁴²⁵

Drawing on the analysis of the national student survey and submissions, as well as comparative international research, this section considers six educational and pragmatic approaches or strategies that should be implemented as part of a university sexual violence prevention framework.

9.2 Good practice responses

9.2.1 Sexual violence prevention education programs

The research and work of sexual assault and harassment experts, practitioners and gender advocates has produced a significant shift in prevention education and training at universities (and elsewhere) from models that previously focused on reducing the risks of sexual assault and harassment. These risk-reduction templates were generally directed at women offering, for example, skills in self-defence and advice on avoiding environments and social scenarios that carry

⁴²¹ Ibid 7(c)(i).

⁴²² Ibid chapter 6.2(d)(iv); Submission No 1140.

⁴²³ Ibid 6.2(d)(iv); Submission No 137.

⁴²⁴ Ibid 6.3(f)(iii); Submission No 594.

⁴²⁵ Ibid chapter 8.2 (Changing attitudes and behaviours).

potential risk. The programs were criticised for perpetuating the 'victim-blaming' myth by placing the responsibility on women to minimise their exposure to sexual assault and harassment⁴²⁶ and failing to dislodge attitudes that 'create an environment in which women are seen as legitimate targets'.⁴²⁷

This shift from the risk-reduction model has seen prevention education and training focus on issues relating to sex and sexual health, healthy relationship skills, myths around sexual violence (such as challenging the view that acquaintance rape is not rape), interpretations of consent, and bystander intervention and protection. The importance of education and challenging assumptions around sexual violence⁴²⁸ has influenced universities across many countries to increasingly introduce prevention education for incoming students and specific student cohorts, such as college students.

Consent training

Within the university sector internationally, there is a growing trend to include consent training programs for specific cohorts of students, notably first year students, with some institutions making participation mandatory.⁴²⁹ Many of the courses aim to educate students on broader issues relating to affirmative consent, including sexual ethics, respectful relationships, the importance of individual choice and autonomy, the legal aspects of consent, interpreting social situations (particularly those involving alcohol, where boundaries of consent may be difficult to establish), and general sexuality education.⁴³⁰

The Title IX Manual of the University of Kansas, which outlines how the university investigates and resolves complaints of sexual violence, has developed a comprehensive definition of consent that emphasises the existence of 'words or actions that show an active, knowing and voluntary agreement to engage in mutually agreed-upon sexual activity'.⁴³¹ The definition of affirmative consent adopted by the SUNY Working Group on Continual Improvement to Sexual Violence Prevention Policies states that it 'does not vary based upon a participant's sex, sexual orientation, gender

⁴²⁶ Jan Hoffman, 'College Rape Prevention Program Proves a Rare Success', *New York Times*, 10 June 2015 <http://www.nytimes.com/2015/06/12/health/college-rape-prevention-program-proves-a-rare-success.html?_r=0>.

⁴²⁷ University of Ottawa, above n 337, 12.

⁴²⁸ Ottawa University conducted a Campus Climate Survey on attitudes towards sexual assault. The results of the survey emphasised the need to educate students on consent, and to target persistent rape myths. According to the survey, men were more likely to hold women responsible for sexual violence, with 21% of men agreeing that women who put themselves in risky situations are partly responsible and 10% of men agreeing that a woman bears some responsibility if she is raped while drunk. Ibid Appendix 4, 49–50.

⁴²⁹ In the US, as outlined in chapter 3, such training is required by particular legislation. In the UK, the University of Oxford has mandatory programs for first year students that form part of their induction course; Lancaster University offers new students an introduction to the issue of consent as part of their induction; at Cambridge University, such training is voluntary and forms part of college induction courses. See Lindsay Brown, 'Sexual Consent Courses Are Now Described as Compulsory at Oxford University', *BBC News*, 4 October 2016 <<http://www.bbc.co.uk/newsbeat/article/37545048/sexual-consent-courses-are-now-described-as-compulsory-at-oxford-university>>; Annabel Murphy, 'Revealed: The Universities Offering Consent Workshops This Freshers', *The Tab*, 30 August 2016 <<https://thetab.com/uk/2016/08/30/universities-offering-consent-workshops-17075>>.

⁴³⁰ See eg the programs offered by the Office of Sexual Assault & Relationship Abuse Education & Response (SARA) at Stanford University <<https://sara.stanford.edu/prevention-education-and-outreach>>; the University of Texas (at Dallas) Sexual Assault Prevention Course <<https://www.utdallas.edu/studentwellness/haven/>>; and the Australian 'Sex and Ethics' program developed by Professor Moira Carmody, which has drawn on international research and education findings <<http://www.sexandethics.net/>>.

⁴³¹ The definition continues: 'It is the responsibility of the initiator, or the person who wants to engage in the specific sexual activity to make sure that he or she has consent. Consent cannot be gained by force, by ignoring or acting without regard to the objections of another, or by taking advantage of the Incapacitation of another, where the accused knows or reasonably should have known of such Incapacitation ... A person always has the right to revoke Consent at any time during a sexual act. Failure to say "no" does not imply consent.' See University of Kansas, *Investigation Process* <<https://studentaffairs.ku.edu/investigation-process>>.

identity, or gender expression'.⁴³²

Australian universities are increasingly designing or implementing consent training programs for application in colleges and for new student intakes.⁴³³ In late 2015, The Hunting Ground Australia Project engaged the Full Stop Foundation to adapt its existing ethics and consent training programs to the Australian university context. The *Sex, Safety & Respect* program and training materials have been employed in a number of Australian universities and residential colleges.⁴³⁴

While there is limited research on the impact of consent education as an effective mechanism for preventing campus sexual violence,⁴³⁵ such programs are generally held to be valuable insofar as they help foster dialogue among students around the issue. However, student support for, and participation in, these courses is critical to their utility. Courses of this nature are best received by students if they are tailored to reflect their concerns, interests and needs.

Bystander intervention programs

The Commission's report reveals that one in four students witnessed sexual harassment of another student at university in 2016, with a small minority witnessing sexual assault. The report further reveals that students who witnessed such conduct usually took no action in response. The most common reason provided for this lack of response was that students did not know what to do.⁴³⁶

Despite the relatively recent introduction of bystander intervention programs at universities, growing research – particularly in the US and Canada – is demonstrating their utility as a tool for preventing

⁴³² SUNY's Chancellor's Temporary Working Group on Continual Improvement to Sexual Violence Prevention Policies develops uniform policies and guidelines to assist SUNY colleges to respond to and prevent sexual assault: State University of New York, *Sexual Violence Prevention Workgroup* <<http://system.suny.edu/sexual-violence-prevention-workgroup/>>. The Working Group devised a comprehensive definition of affirmative consent: 'a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression'.

⁴³³ The Australia National University (ANU) and its colleges offer sexual prevention training courses that are compulsory at some colleges, such as John XXIII. See Emily Baker, 'Australian National University Offers Consent Training to Combat Sexist Behaviour', *Canberra Times*, 15 March 2017 <<http://www.canberratimes.com.au/act-news/australian-national-university-offers-online-consent-training-to-combat-sexist-behaviour-20170310-guvp4w.html>>. In June 2017, Monash University, in collaboration with 'student organisations and other authorities', implemented an online educational module, *Respectful and Responsible*, as part of a university initiative to address sexual and interpersonal violence. The module covers topics including rights and responsibilities, healthy relationships, alcohol and other drugs, problem behaviour and misconduct, and bystander interventions. See <<https://www.monash.edu/safer-community/initiatives/respectful-community>>. See also The Hunting Ground Australia Project, *Progress Report* July 2017, above n 16.

⁴³⁴ The Full Stop Foundation has developed a range of educational resources and training for university staff and students, which are delivered by individuals specifically trained to deliver sexual violence prevention education. The Sex & Ethics Sexual Violence Prevention Program is designed for student leaders within student housing, student housing providers, and student leaders in key positions to influence student behaviour and culture on campus. The program, which is delivered in two-hour sessions over four to six weeks, includes topics such as ethical consent, ethical use of social media, and skills in managing sexual assault disclosures. In September 2016, community campaigning organisation Fair Agenda contacted the 214 university residences across Australia to complete a survey that asked what, if any, training they will be providing to students and relevant staff in relation to university sexual assault and harassment in 2017. For the survey results, see Fair Agenda, *Which Uni Residences Are Providing Training to Prevent Sexual Assault?* <http://www.fairagenda.org/residences_survey>.

⁴³⁵ Sydney University has declined requests by Student Women's Officers for mandatory consent training modules on the basis of a 'lack of pedagogical evidence': Justine Landis-Hanley, 'University Dismisses Mandatory Consent Module', *Honi Soit*, 23 March 2017 <<http://honisoit.com/2017/03/university-dismisses-mandatory-consent-module/>>. Research by Moira Carmody on the *Sex and Ethics Violence Prevention Program* found that young men surveyed following their completion of the program showed positive behavioural changes: Moira Carmody, 'Young Men, Sexual Ethics and Sexual Negotiation' (2013) 18(2) *Sociological Research Online* 22, 26.

⁴³⁶ Commission's report, above n 15, chapter 5(c).

sexual assault.⁴³⁷ Bystander intervention programs have been used with success at many US universities and recent US legislation requires universities to implement bystander programs.⁴³⁸ The *Bringing in the Bystander In-Person Prevention Program*,⁴³⁹ designed by the University of New Hampshire's Prevention Innovations Research Center, has been implemented at various US universities and at the University of Windsor (Canada) as an evidence-based and evaluated prevention program that encourages student-participants to see themselves as potential bystanders who could intervene and stop an assault before it happens:

*Students learn the importance of speaking out against social norms that support sexual assault and coercion, how to recognize and safely interrupt situations that could lead to sexual assault, and how to be an effective and supportive ally to survivors.*⁴⁴⁰

The University of Windsor was the first Canadian campus to use the *Bringing in the Bystander* workshops by integrating the program within faculty curricula as part of the University's Strategic Priority Initiative.⁴⁴¹ Not all interactive training programs (which are often delivered to specific cohorts of students and colleges) can reach the entire student body, with cost often being a key consideration. For this reason, the 'infusion'⁴⁴² of preventative strategies, such as bystander intervention programs, within university course curricula may be a useful method for securing maximum coverage.

The *Intervention Initiative* (UK) was developed following an extensive review of other bystander programs. It aims to prevent sexual violence within universities through an evidence-based educational program that empowers 'students to act as pro-social citizens'.⁴⁴³ This free program, which is funded by government agency Public Health England,⁴⁴⁴ involves eight 60–90 minute mixed-gender sessions, delivered by trained facilitators. The *Intervention Initiative* toolkit developed for course leaders and facilitators is available online for anyone to use, reproduce or amend with the appropriate acknowledgements.⁴⁴⁵ It has been recommended as a model by the Universities UK Taskforce and has been included as part of numerous universities' strategies for dealing with sexual

⁴³⁷ See Rachel A Fenton et al, 'A Review of Evidence of Bystander Intervention to Prevent Sexual and Domestic Violence in Universities' (2016) *Public Health England* 5, 6, 36–53. Research at the University of Windsor (Canada) into the effectiveness of its bystander program indicates that 'participants who attended the workshop were significantly more confident in their ability to intervene effectively in a situation where there was a risk of sexual assault than those in the control group, and were also more willing to intervene': Rosanna Tamburri, 'Bystander Intervention Program Changes Attitudes About Sexual Assault', *University Affairs*, 15 October 2014 <<http://www.universityaffairs.ca/news/news-article/bystander-intervention-program-changes-attitudes-sexual-assault/>>. See also Ann Coker et al, 'Evaluation of Green Dot: An Active Bystander Intervention to Reduce Sexual Violence on College Campuses' (2011) 17(6) *Violence Against Women* 777.

⁴³⁸ See chapter 3 regarding the *Campus SaVE Act* (2014).

⁴³⁹ University of New Hampshire College of Liberal Arts, *Bringing in the Bystander In-Person Prevention Program* <<http://cola.unh.edu/prevention-innovations-research-center/bringing-bystander%C2%AE-person-prevention-program>>.

⁴⁴⁰ University of Windsor, *Empowering Student Bystanders* <<http://www.uwindsor.ca/bystanderinitiative/>>.

⁴⁴¹ Ibid.

⁴⁴² Karjane, Fisher and Cullen, above n 279, 126.

⁴⁴³ University of the West of England, Bristol, *The Intervention Initiative* <www.uwe.ac.uk/bl/research/InterventionInitiative>.

⁴⁴⁴ Universities UK, above n 32, 111.

⁴⁴⁵ University of the West of England, Bristol, *The Intervention Initiative Toolkit* <<http://www1.uwe.ac.uk/bl/research/interventioninitiative/thetoolkit.aspx>>.

violence and harassment, including at Durham and York Universities.⁴⁴⁶

At Stellenbosch University in South Africa, students can enrol in a short course run by the University's Equality Unit. The course, which is called 'Social Justice Facilitation: HIV, sexuality and gender', addresses access to quality HIV and sexually transmitted infection prevention and treatment services, as well as sexual wellness, and promotes responsible sexual behaviour among students.⁴⁴⁷ The Equality Unit also conducts a workshop known as 'Positive leadership, positive change' for university staff to develop the necessary knowledge, skills and attitudes to contribute positively to issues related to gender violence, HIV, unfair discrimination, sexual harassment and victimisation.⁴⁴⁸

9.2.2 Mode of delivery of sexual violence prevention education programs

Despite diverse approaches to the content and delivery of prevention education training programs, research indicates that effective prevention programs are generally developed in accordance with a theory of change and are socio-culturally sensitive; delivered by well-trained staff with sufficient time to present a comprehensive program; delivered via a range of methods; and regularly evaluated.⁴⁴⁹ While face-to-face delivery of these programs is usually preferred, the tension often arises between the optimal number of staff and students who should participate in education programs, the time available, and the cost of implementation or delivery.

While there is no one mode of delivery that appears to be most effective, the following features are important considerations in developing and delivering prevention programs:

- The target audience is an important factor in determining whether the program is delivered face-to-face, online or via a combination of these methods. This decision can depend on the gender, sexuality and cultural background of potential participants and whether they are campus-based or remote-learning students. Evidence suggests that programs may be more effective in changing attitudes and behaviour if delivered to a single-sex audience, due to the fact that the messaging surrounding sexual assault and harassment is understood differently as between men and women.⁴⁵⁰ In addition, social and cultural factors and 'fears of embarrassment may make it difficult for men to discuss their attitudes openly when women are present'.⁴⁵¹

⁴⁴⁶ Universities UK, above n 32, 34. Durham University have piloted a bystander program and York University (Canada), following implementation of a pilot program, is developing an Active Bystander Program: Durham University, *Sexual Violence & Misconduct: Prevention and Response* (6 February 2017) <<https://www.dur.ac.uk/sexualviolence/>>; York University, Sexual Violence Response and Support <<http://sexual-violence-response.info.yorku.ca/>>.

⁴⁴⁷ Stellenbosch University, *Social Justice Facilitation: HIV, Sexuality and Gender* <<http://shortcourses.sun.ac.za/courses/c-14/2017-3704.html>>.

⁴⁴⁸ Stellenbosch University, Centre for Student Counselling & Development, *Workshops* <<http://www.sun.ac.za/english/learning-teaching/student-affairs/cscd/equality-unit/our-services/workshops>>.

⁴⁴⁹ Moira Carmody, Susan Evans, Chris Krogh, Michael Flood, Melanie Heenan and Georgia Ovenden, *Framing Best Practice: National Standards for the Primary Prevention of Sexual Assault Through Education* (2009) National Association of Services Against Sexual Violence, 30–62 <http://www.nasasv.org.au/PDFs/Standards_Full_Report.pdf>. See also the national standards for effective sexual assault prevention education proposed by the authors 'to enhance the field of sexual assault prevention education and increase the ability to achieve primary prevention,' 23-29.

⁴⁵⁰ Hannah Bows, Stephen Burrell and Nicole Westmarland, *Rapid Evidence Assessment of Current Interventions, Approaches, and Policies on Sexual Violence on Campus* (Prepared for Durham University Sexual Violence Task Force, September 2015), <<https://www.dur.ac.uk/resources/svtf/DUSVTFRAEfinalpdfversion.pdf>>.

⁴⁵¹ Ibid.

- While some training programs rely on peer-led training and discussions, professionally trained and experienced experts can bring significant experience and perspectives to the presentation of prevention programs. They may also be able to adjust the program *in situ* to suit a particular student cohort. The benefits of student facilitators or peer-to-peer training groups is that they facilitate valuable peer discussion opportunities to explore difficult issues confronting students, which may facilitate a change in awareness of and assumptions that underpin sexual assault and harassment.

Although there exists a wide range of training programs, some may not be appropriate or relevant to the university context. For this reason, universities should carefully assess and evaluate programs and trainers to ensure that they are appropriately endorsed and effective, that they reflect the needs of participants –in terms of both content and method of delivery – and ultimately contribute to changing harmful behavioural attitudes and patterns.

9.2.3 Addressing the relationship between alcohol consumption and university sexual violence

*When it comes to drunk driving, the criminal law decrees that people are incapable of driving safely if they exceed a universal blood alcohol level. There's no similar line for determining when someone is too drunk to consent to sex.*⁴⁵²

*If we are to effectively decrease the incidence of sexual assault, we must address the role of alcohol.*⁴⁵³

The Commission's report found that many students identified alcohol as a contributing factor to incidents of sexual assault and harassment.⁴⁵⁴ This finding is reflected in international research,⁴⁵⁵ with established links particularly between 'acquaintance rape and alcohol consumption' among US college students.⁴⁵⁶ Research about the influence of alcohol further suggests that women victims of sexual assault while intoxicated often blame themselves for the assault or may be under-age, factors that potentially prevent them from reporting the incident or seeking help.⁴⁵⁷

⁴⁵² Kathleen A Bogle and Anne M Coughlin, 'The Missing Key to Fighting Sexual Assault on Campus', *Slate*, 8 May 2014 <http://www.slate.com/articles/news_and_politics/jurisprudence/2014/05/drinking_and_sexual_assault_on_campus_universities_must_define_when_sex.html>.

⁴⁵³ Harvard University, *Task Force on the Prevention of Sexual Assault: Final Report* (7 March 2016), 12 <https://sexualassaulttaskforce.harvard.edu/files/taskforce/files/final_report_of_the_task_force_on_the_prevention_of_sexual_assault_16_03_07.pdf>.

⁴⁵⁴ Commission's report, above n 15, chapter 3.4(a): 'A number of students (in submissions) described alcohol being used by the perpetrator to commit sexual assault or sexual harassment.' See also chapter 3.4(a)(ii) and (iii), 3.5(a) (i)-(iv), 3.6, 3.7; chapter 4, chapter 6.2(d)(iv), chapter 7(a) and (b), chapter 8.5.

⁴⁵⁵ See eg William Flack et al, 'Risk Factors and Consequences of Unwanted Sex Among University Students Hooking Up, Alcohol, and Stress Response' (2007) 22(2) *Journal of Interpersonal Violence* 139, 147, 152; William Flack et al, "'The Red Zone": Temporal Risk for Unwanted Sex Among College Students' (2008) 23(9) *Journal of Interpersonal Violence* 1177, 1188; Charlene Senn et al, 'Sexual Violence in the Lives of First-Year University Women in Canada: No Improvements in the 21st Century' (2014) 14 *BMC Women's Health* 135, 137; Cantor et al, above n 12, ix. In the Australia context, see Liz Wall and Antonia Quadara, 'Under the influence? Considering the role of alcohol and sexual assault in social contexts' (2014) 18 *Australian Institute of Family Studies* <<https://aifs.gov.au/publications/under-influence>>

⁴⁵⁶ Antonia Abbey 'Acquaintance Rape and Alcohol Consumption on College Campuses: How Are They Linked?' (1991) 39(4) *Journal of American College Health* 165.

⁴⁵⁷ Martin Schwartz and Molly S Leggett, 'Bad Dates or Emotional Trauma? The Aftermath of Campus Sexual Assault' (1999) 5(3) *Violence Against Women* 251. See State University of New York, *Policy for Alcohol and/or Drug Use Amnesty in Sexual and Interpersonal Violence Cases* <<http://system.suny.edu/sexual-violence-prevention-workgroup/policies/drugs-amnesty/>>.

Practical measures may serve to address the link between alcohol and sexual assault in university settings. The Final Report of the Harvard University *Task Force on the Prevention of Sexual Assault* recommends a number of strategies, such as moving off-campus student parties on to the campus to enable universities to exercise control over the sale and consumption of alcohol; requiring the provision of water and non-alcoholic beverages at student events; increasing the availability of food at student parties; and restricting the sale of hard liquor at large events.⁴⁵⁸

Policy initiatives might also be adopted to address the issue, particularly in managing excessive consumption of alcohol. The Policy of Student Alcohol Awareness and Use implemented by Durham University states that the university will not sanction any event or activity that encourages excessive or inappropriate consumption of alcohol, or events at college bars that 'encourage the purchase of alcohol through giveaways or reduced prices'.⁴⁵⁹ The policy also stipulates 'zero tolerance' in relation to initiation ceremonies.⁴⁶⁰ Integrating bystander intervention strategies and responsible alcohol policies, University of Calgary (Canada) students who work at a student bar undertook a three-hour workshop from the Calgary Sexual Health Centre, which included training on how to identify potentially uncomfortable or dangerous scenarios and how to appropriately intervene before the situation escalates.⁴⁶¹

While the development and implementation of alcohol policies at universities – for example, in relation to pricing and availability – 'has the potential to prevent or reduce sexual violence perpetration, [it is only] one component of a comprehensive prevention strategy'.⁴⁶² This is an important factor to emphasise in university sexual violence prevention programs that integrate alcohol and drug education programs. Importantly, however, these policies should also include information about the impact of levels of alcohol consumption and the use of different drugs on cognitive functions. The policies should emphasise that even in cases of sexual assault where the victim was incapacitated due to substance use, 'sole responsibility for the assault lies with the perpetrator', and that 'an intoxicated [or incapacitated] person cannot legally consent to sexual contact'.⁴⁶³

9.2.4 Establishing behavioural expectations: university student codes of conduct

A university's commitment to promoting equality and inclusivity should include clear guidance for students regarding unacceptable conduct – including sexual assault and harassment – that is prohibited among the university community, both on and off campus.⁴⁶⁴ An additional forum for the reinforcement of university policies on sexual assault and harassment is university codes of student

⁴⁵⁸ Harvard University, above n 453, 13–14.

⁴⁵⁹ Durham University, *Policy on Student Alcohol Awareness and Use*, s 9 <<https://www.dur.ac.uk/resources/about/policies/PolicyonStudentAlcoholAwarenessandUseF.pdf>>.

⁴⁶⁰ Ibid.

⁴⁶¹ Clara Ho, 'U of C Bar Trains Staff in Sexual Assault Prevention', *Calgary Herald*, 10 January 2014 <<http://www.calgaryherald.com/news/trains+staff+sexual+assault+prevention/10249938/story.html>>.

⁴⁶² Centers for Disease Control and Prevention, above n 339, 10.

⁴⁶³ Christopher P Krebs et al, *The Campus Sexual Assault (CSA) Study*, October 2007, National Institute of Justice, xviii–xix <<https://www.ncjrs.gov/pdffiles1/nij/grants/221153.pdf>>.

⁴⁶⁴ See Columbia University, above n 225; Harvard University, above n 215; London School of Economics, above n 225, Stanford University, above n 225, University of Oxford, above n 225.

conduct, or college charters of rights and responsibilities, that explicitly set out student behavioural expectations and responsibilities. Codes of conduct may mirror and reinforce the key provisions of universities' sexual assault and harassment policies and broader institutional values, such as respecting equity and diversity.⁴⁶⁵ Some universities make it a condition of enrolment that students adhere to the codes of conduct, with breaches of the code triggering the disciplinary process.⁴⁶⁶ At the University of Oxford, new students are required to sign a contract with the university that clearly sets out students' responsibilities and stipulates compliance with the University's Statutes and Regulations and related Codes of Policy, Practice and Procedure. As part of the contract, students are also provided with a student handbook that summarises the key provisions of these regulatory documents and provides information on various student support needs, including in relation to incidents of sexual violence and harassment. These contracts and accompanying handbooks are sent to all new students.⁴⁶⁷

The benefit of student codes of conduct is that they not only reinforce the provisions of university policies, but in framing the language in terms of student conduct, rights and responsibilities, they also highlight the impact of prohibited conduct. In addition, as discussed in chapter 7 of this report, the dissemination on university websites and in student publications of de-identified information about the outcomes or sanctions for students who have been found to have committed acts of sexual assault or harassment can be an important method of deterrence, alerting the student community to the consequences of breaching university regulations, student codes or charters.

University policies and related protocols may be overlooked by students until such time as they require them. By including codes of conduct at the stage of enrolment and induction, students are put on notice regarding expected standards of behaviour. These responsibilities can be further reinforced by requiring students, prior to or during induction week, to undertake an online assessment of their understanding of the sexual assault and harassment policies and protocols – a process similar to occupational, health and safety knowledge assessments undertaken at many workplaces.

9.2.5 Campaigns and social media initiatives

Multifaceted media campaigns are a useful tool for promoting issues such as sexual consent and bystander intervention and re-stating key messages underlying prevention training programs via a variety of visual and other methods. An American university study on the impact of a social marketing campaign, *Know your Power*, on 'pro-social bystander behaviour' found that those students who noticed the campaign posters and 'perceived a familiarity with the content' were more likely to take bystander preventative action.⁴⁶⁸

⁴⁶⁵ See the University of Western Australia and Curtin University (Australia) charters of rights and responsibilities: Curtin University, *Student Rights and Responsibilities* (3 October 2016) <<http://students.curtin.edu.au/rights/>>; University of Western Australia, *University Charter of Student Rights and Responsibilities* <<http://www.student.uwa.edu.au/experience/charter>>.

⁴⁶⁶ See University of Western Australia, *Code of Ethics – An Overview* <<http://www.hr.uwa.edu.au/policies/policies/conduct/code>>. Universities may also require students to simply check a declaration box on their enrolment form stipulating that they have read and understood the student code of conduct.

⁴⁶⁷ University of Oxford, *Your Contract with the University* <<https://www.ox.ac.uk/students/new/contract?wssl=1>>.

⁴⁶⁸ Bows, Burrell and Westmarland, above n 450, 9.

In the UK, the Crown Prosecution Service, in partnership with the National Union of Students, Rape Crisis and other agencies, launched a social media campaign *#ConsentIs*, 'to get people talking about consent to sex within the context of sexual assault and rape'.⁴⁶⁹ The *#ConsentIs* webpage effectively illustrates some of the myths surrounding the issue of consent and the impact of sexual assault. The Universities Australia *Respect. Now. Always.* campaign,⁴⁷⁰ launched in February 2016, was an example of a sector-wide collaboration promoting awareness of campus sexual violence and support services. These campaigns derive enhanced value for students when devised in consultation with their representatives and when combined (and aligned) with university strategies directed at securing changes in institutional practice.

In seeking to reach as broad a student audience as possible, there is scope for greater use of social media to promote awareness of consent and relevant services in Australia. Importantly, this should not be limited to content produced by the university sector. Material produced by students not only harnesses their creativity and knowledge, but also ensures that the messages conveyed are not 'top down'. Universities may enable this process by providing funding in the form of competitive grants to relevant student bodies.

9.2.6 Practical prevention measures

The Commission's report indicates that almost half (45%) of students who were sexually harassed in a university setting in 2015 or 2016 knew some or all of the perpetrators. The report further notes that the majority (51%) of students sexually assaulted at university in 2015 or 2016 knew some or all of the perpetrators.⁴⁷¹ While incidents of sexual violence can be opportunistic, and often occur in semi-private settings such as in student accommodation, these figures may be instructive in relation to the focus by universities on the implementation of practical measures directed at sexual violence prevention, such as increased lighting and vegetation-free walkways.⁴⁷²

The installation of 24/7 security patrols, well-lit pathways to libraries and residences, night-time transportation schemes,⁴⁷³ and women-only parking areas are some examples of physical or environmental measures directed at preventing (or at least deterring) sexual violence. With technological advances, additional practical measures have become more immediately accessible and can be designed to meet a particular student need or exigency. In the US and Canada, the creation of university-specific 'safety apps' consolidates safety resource information and provides

⁴⁶⁹ Crown Prosecution Service, *#ConsentIs* (21 September 2015) <http://www.cps.gov.uk/news/articles/consent_is/>. See also Alison Saunders, 'Consent Is Simple. We Should All Be Clear What Constitutes Rape', *The Guardian*, 24 September 2015 <<https://www.theguardian.com/commentisfree/2015/sep/23/sexual-consent-rape-prosecution-myth-consentis>>.

⁴⁷⁰ Universities Australia, above n 44.

⁴⁷¹ Commission's report, above n 15, chapter 2.5(b). See also chapter 6.2(d)(ix)

⁴⁷² The EROC Australia submission to the Australian Human Rights Commission highlights issues associated with 'safety tips' and recommends that Australian universities remove any safety tips from their websites that place blame on victims, such as avoiding certain areas. EROC Australia, above n 84, 23–24, 46.

⁴⁷³ At Rhodes University in South Africa, the 'Get Home Safe' project assists vulnerable and intoxicated students arrive home safely from popular nightspots. See Rhodes University, *Get Home Safe* (2009) <<https://www.ru.ac.za/media/rhodesuniversity/content/deanofstudents/documents/Get%20Home%20Safe.pdf>>. The Campus Protection Service at the University of Cape Town operates 24 hours a day, seven days a week and is available to escort students within campus late at night. See University of Cape Town, *Campus Safety* <<https://www.uct.ac.za/students/health/campussafety/>>.

a direct line to campus security and other safety-related and first aid services.⁴⁷⁴ Other examples include the *Walkhome* student-operated safety service at Queen's University, which provides teams of one male and one female student to accompany students to a campus or local community destination. The service is anonymous and confidential, and students can quickly access the service through the University's *SeQure* app.⁴⁷⁵ Safety apps are also being introduced in various Australian universities: UQ *SafeZone* connects staff and students directly with university security officers or emergency services at the University of Queensland and this same app has been introduced at RMIT and the University of South Australia, with the University of Melbourne introducing a similar app called *UniSafe*. Additionally, the University of Adelaide's Law School has partnered with the Law Society of South Australia to devise an educational and interactive app, *Out Of Bounds*, that explains the laws relating to sexting, cyber-bullying, and unlawful sexual intercourse.⁴⁷⁶

There is no doubt that practical or environmental prevention measures serve to enhance the safety of students and may contribute to the deterrence of university sexual violence. As is the case with university policies that seek to manage alcohol consumption, these initiatives are clearly required – but, ideally, they should exist as important components of a comprehensive prevention strategy that sets social and cultural change as its core aim in reducing and ultimately, preventing university sexual assault and harassment.

⁴⁷⁴ See eg AppArmor, which is used at the University of Florida and Dalhousie University (Canada): Rhea Kelly, 'Universities Roll Out Custom Mobile Safety Apps', *Campus Technology*, 1 May 2016 <<https://campustechnology.com/articles/2016/01/05/universities-roll-out-custom-mobile-safety-apps.aspx>>; Lee Rickwood, 'Canadian Company Develops Customizable Mobile Safety Apps for Top Colleges, Universities', *Whats Your Tech*, 18 March 2016 <<http://whatsyourtech.ca/2016/03/18/canadian-company-develops-customizable-mobile-safety-apps-for-top-colleges-universities/>>. In the UK, university apps have also been devised, including the *SafeZone* app at the University of Kent: Allie Burnett, 'Campus Safety App for Students and Staff', *University of Kent*, 4 April 2016 <<https://www.kent.ac.uk/student/news/?id=6021&source=blog>>; and the *FirstResponse* app is available at the University of Oxford: *First Response App* <<http://www.firstresponseoxford.org/>>.

⁴⁷⁵ Queen's University, *SeQure – Queen's University Student Safety App*, AppAdvice <<https://appadvice.com/app/sequire-queens-university-student/542733619>>. See also the app *Walkhome* <<http://walkhome.ca/>>.

⁴⁷⁶ The University of Queensland, UQ *SafeZone* <<https://www.pf.uq.edu.au/unisafe/uqsafezone/>>; RMIT University <<http://www1.rmit.edu.au/security/safezone>>; University of South Australia <<http://i.unisa.edu.au/staff/facilities/security/safezone/>>; University of Melbourne <<http://newsroom.melbourne.edu/news/new-unisafe-app-enhances-campus-experience>>. Law Society of South Australia, *Out of Bounds* <http://www.lawsocietysa.asn.au/LSSA/Out_of_Bounds_App.aspx>.

Good practice pointers: prevention strategies

- Changing attitudes and behaviour that enable and normalise sexual assault and harassment – including by enforcing existing policies which prohibit these behaviours – is critical to minimising and preventing sexual assault and harassment at universities.
- Systemic change requires a multifaceted sexual violence prevention education strategy that includes evidence-based education training programs combined with awareness-raising campaigns that highlight unacceptable behaviours and attitudes across all elements of a university, including residential colleges.
- Sexual prevention education programs must cover issues such as definitions of sexual assault and harassment, interpretations of consent, respectful and healthy relationships, bystander intervention, and myths around sexual violence (such as challenging the view that acquaintance rape is not rape).
- Sexual violence prevention education programs must be specifically designed for the student-university environment; relevant and applicable to different student groups, including international students; delivered by specialist trainers; and available in different modes, such as online and face-to-face. While off-the-shelf training programs are readily available and may be more economical, they may not be evidence-based or university specific.
- Practical and policy mechanisms addressing the responsible service and consumption of alcohol on university campuses, at university events and in colleges should be devised and enforced in recognition of the link between alcohol and sexual assault in university settings.
- University environmental facilities, such as increased campus security patrols, the installation of CCTV cameras, and night-time university transport services can serve to enhance student feelings of safety and deter the perpetration of sexual violence on campus. However, they should be implemented as part of a whole-of-university prevention strategy that is directed at changing the underlying attitudes and behaviour that facilitate sexual assault and harassment.
- Changing attitudes and patterns of behaviour takes time, leadership commitment and appropriate resourcing. Sexual prevention education programs need to be sustained and conducted every year for new staff and annual student intakes, and must be regularly evaluated and revised to ensure ongoing utility.

10. Conclusions and recommendations

This report has covered considerable ground in relation to the issues underlying the management and prevention of university sexual assault and harassment in university settings. While the concerns and issues that give rise to and offer resolution of campus sexual violence are multiple and complex, the analysis of the 2016 national student survey and the comparative international research on which this report is primarily based point to five concluding observations that frame the recommendations which follow. The recommendations are directed at initiatives for application and adaption by key stakeholders – namely, universities and residential colleges, governments and the student community – in their efforts to address and prevent sexual assault and sexual harassment.

10.1 Prevalence in relation to sexual assault and sexual harassment ‘does not tell the whole story’

The initiation and implementation of the 2016 national student survey – and the participation by all 39 Australian universities in the survey and their agreement to release individual university results⁴⁷⁷ – was a major milestone in developing a strategy around which Australian universities ‘came together with this issue [of sexual assault and harassment] high on our agenda, and ... resolved to address it’.⁴⁷⁸

While the data from the survey and the submissions to the Australian Human Rights Commission have revealed significant findings on prevalence, they also indicate patterns of institutional failure in the management of university sexual violence and in addressing ‘the culture in which [this] data arise[s]’.⁴⁷⁹ Underlying these findings are references to an institutional culture that normalises such violence and recognition that gender inequality and gender-based discrimination are frequently the reasons for its manifestation.

A focus on reducing sexual violence prevalence figures is obviously of critical importance. However, visible university leadership, sustained and comprehensive engagement with student representatives, and institutional support for research on gender violence remain fundamental to exposing and dismantling the structural and cultural factors that maintain gender-based discrimination and gender inequality and facilitate harmful attitudes and behaviour.

⁴⁷⁷ Universities Australia, ‘Universities Confirm Release of Sexual Assault and Harassment Data’ (Media Release, 5 April 2017) <<https://www.universitiesaustralia.edu.au/Media-and-Events/media-releases/Universities-confirm-release-of-sexual-assault-and-harassment-data#.WTPgsjOB0wQ>>.

⁴⁷⁸ Former Universities Australia Chair and Vice-Chancellor of Western Sydney University, Barney Glover, quoted in in Eryk Bagshaw, ‘All Australian Universities Commit to Releasing Sexual Assault Data’, *Sydney Morning Herald*, 6 April 2017 <<http://www.smh.com.au/federal-politics/political-news/all-australian-universities-commit-to-releasing-sexual-assault-data-20170405-gve63t.html>>.

⁴⁷⁹ Women’s Collective, University of Sydney, above n 281.

10.2 Universities have a collective responsibility to address and reduce the identified risk of campus sexual violence

Following the publication of the Commission's report on the national student survey in August 2017 and the commitment by individual universities to publicly release the data pertaining to each institution,⁴⁸⁰ Australian universities are effectively on notice in relation to the incidence of university sexual violence and the institutional deficiencies that underlie responses to, and the prevention of, student sexual assault and harassment.

What is also evident is that ad hoc or piecemeal institutional responses are inappropriate and fail to recognise the 'persistent and pervasive'⁴⁸¹ problem of campus sexual violence. While there may be a propensity to rank individual universities according to their profiles on prevalence – and a range of factors may serve to explain specific university reports – this focus undermines the necessary task of the sector as a whole. Reducing the risk of violence and the harm incurred by student victims requires an assiduous and collective commitment from universities to effective and rigorous institutional strategies that address and prevent its recurrence. Underlying this commitment is the wellbeing of the Australian student population – particularly those groups identified by the Commission's report as being at greater risk of sexual assault.

Universities have a responsibility to 'create an environment in which ... students can develop to their full potential' and cultivate respectful and responsible 'behaviours and skills ... both on campus and as they progress into broader community life'.⁴⁸² The establishment of a government-led taskforce on university sexual assault and harassment (as was the case in the US and in the UK) or national strategy on university sexual assault and harassment, the creation of a cross-university standing committee on improving institutional responses, or the implementation of a national university plan on preventing sexual violence can all provide a vital demonstration of government and university commitment to a 'serious issue of national concern'.

10.3 Accountability mechanisms must reflect and respond to student needs

Increasingly, universities are appropriately seeking advice from their student communities about the utility and impact of policies and practices that aim to address and prevent campus sexual assault and harassment. The Commission's report and comparative international research suggest that two key areas of student concern would benefit from review and clarification by universities with reference to student experiences. These two issues are:

- (i) the referral of victims of sexual violence, or their reports, to the police (considered in chapter 7); and
- (ii) the nature of internal disciplinary investigations and hearings.

The first concern for students is that universities treat complaints of sexual violence – particularly

⁴⁸⁰ In April 2017, Universities Australia confirmed that all 39 universities would publicly release the data pertaining to each university that has emerged from the conduct of the national student survey by the Australian Human Rights Commission: Universities Australia, above n 477.

⁴⁸¹ Ropers-Huilman, Williamsen and Hoffman, above n 54.

⁴⁸² Professor Peter Dawkins, Vice-Chancellor, quoted in Victoria University, above n 251.

sexual assault – as a police matter, encouraging students to report their complaints to the police for possible investigation under the criminal justice system. This response by universities may risk overlooking the victim's wishes and needs, potentially exacerbating their trauma or prompting the withdrawal of a complaint.

The lack of clarity around how a university deals with reports of sexual assault can also affect how a complaint will be adjudicated, with some universities assuming that a report to police excludes the possibility of an internal disciplinary hearing. For '[v]ictims of sexual assault [who] want to feel like their complaints are heard and taken seriously by their [universities]'⁴⁸³ internal disciplinary procedures are often important (and preferable) alternatives to the criminal justice system.

The resolution of both these issues ultimately requires that the safety and rights of the victim are at the centre of any process employed for the determination of a complaint – despite the purpose of an internal disciplinary hearing, which is to establish whether a university's misconduct policy or student code was breached by an alleged perpetrator. The investigation and hearing of a complaint of sexual assault or harassment, which should be conducted in accordance with clearly set out and transparent procedural rules, must take into account the wellbeing of the victim at all stages of the process, from reporting to final determination. Where required, the process should be adapted to meet the needs in particular of women, Aboriginal and Torres Strait Islander students, CALD and international students, students with disability and LGBTIQ students.

10.4 Effective policies require long-term institutional commitment, appropriate resources and rigorous enforcement

A significant part of this report focuses on the foundational principles that should ideally inform the design and implementation of good practice university policies and procedures across all aspects of managing and preventing sexual assault and harassment (chapters, 4, 5 and 7).

However, the most comprehensive policies will have limited impact and utility for their intended beneficiaries if the environment in which they are implemented is not perceived as conducive to students making or pursuing complaints of sexual assault and sexual harassment; the outcome of investigations and disciplinary hearings is inconsistent, inappropriate, poorly disseminated or not enforced; and student support services (remedial, therapeutic and academic) are insufficiently resourced to meet the immediate and longer-term needs of student victims of sexual violence.

The manner in which an institution designs and implements a policy can have a direct impact on the degree to which students will utilise the procedure. To maximise the efficacy of university sexual assault and harassment policies, they should be:

- allocated sufficient and ongoing resources to ensure their use by students;
- regularly reviewed and revised, as appropriate; and
- enforced in accordance with established, transparent and fair principles.

Importantly, these policies cannot be implemented in isolation or simply offer ad hoc solutions. Rather, they need to be developed as part of a whole-of university, long-term broader strategy that

⁴⁸³ Karjane, Fisher and Cullen, above n 279, 135.

prioritises an intra-university commitment to redressing and preventing exclusion, gender-based discrimination and gender inequality – often the causes and consequences of gender violence – via sustained prevention education programs and cross-disciplinary research.

10.5 A focus on liability and institutional reputation undermines the duty to ensure student wellbeing

As this report and The Hunting Ground Australia Project *Progress Reports*⁴⁸⁴ document, the increased national (and international) focus on the extent and impact of university sexual assault and harassment has led to the development of initiatives by some Australian universities aimed at more effective and sensitive management of reports of sexual violence, and its prevention. Ostensibly, at the core of these developments is an acknowledgement of a university's duty of care towards its students, given the recognised impact of sexual violence on a student's academic experience and on their physical and mental health and social life.

Combined with a duty of care in relation to its students is a university's responsibility to 'protect its fiscal and structural integrity'.⁴⁸⁵ This imperative can take the form of risk assessment and management strategies that may compel administrators to become 'more concerned with defending the [institution] from a potential lawsuit than with vindicating the rights of women'.⁴⁸⁶ Concerns about the impact of reports of sexual assault or harassment and misogynist practices at universities on a university's reputation and standing, or apprehension about possible claims by alleged perpetrators of university breaches of due process or procedural fairness, can drive a defensive institutional response that focuses on liability.

However, the prospect of economic risk to universities may be greater in cases brought against them by victims (where, for example, universities have failed to implement fair, transparent and adequate procedures to combat sexual violence, or to diligently pursue a complaint⁴⁸⁷) than those instituted by alleged perpetrators for a violation of procedural rights.⁴⁸⁸

A concern with liability can provoke hasty and reactive university action, which may also exacerbate trauma to victims, bystanders and the student community more broadly. Ultimately, the proactive development of clear and comprehensive policies and procedures that are rigorously enforced, the application of consistent sanctions, the provision of appropriate and adequate support services, and the implementation of prevention strategies informed by research and evaluation, combine not only to prioritise student wellbeing but will also serve to mitigate institutional liability.

⁴⁸⁴ The Hunting Ground Australia Project, above n 16.

⁴⁸⁵ Jill C Engle, 'Mandatory Reporting of Campus Sexual Assault and Domestic Violence: Moving to a Victim-Centric Protocol that Comports with Federal Law' (2015) 24 *Temple Political & Civil Rights Law Review* 401, 408.

⁴⁸⁶ Anna-Maria Marshall, 'Consciousness in Context: Employees' Views of Sexual Harassment Grievance Procedures' in Ben Fleury-Steiner and Laura B Nielsen (eds), *New Civil Rights Research: A Constitutive Approach* (Ashgate 2006) 114.

⁴⁸⁷ See *Ford v Nipissing University* [2011] HRTO 204, 63–65, 68, 70–73; *Davis v Monroe County Bd. of Ed.* (97-843) 526 US 629 (1999).

⁴⁸⁸ Nancy Cantalupo, 'Violating Student Victims' Rights Is Expensive', *Times Magazine*, 15 May 2014 <<http://time.com/99697/campus-sexual-assault-nancy-chi-cantalupo/>>.

Recommendations

The recommendations are directed at initiatives for application and adaption by key stakeholders in their efforts to address and prevent university sexual assault and harassment – namely, universities (including residential colleges), governments and the student community. As mentioned earlier in this report, they have been drafted with an awareness that each university's response to these recommendations will be shaped by factors relevant to that institution, such as its size, student demographic and geographical location.

The recommendations largely reflect the key issues raised by the Commission's report of the national student survey – namely, institutional responses, student support, and prevention measures or strategies. These issues are specifically addressed in chapters 7, 8 and 9 of this report.

The recommendations have been drafted in accordance with the good practice foundational principles discussed in chapter 4 and the enabling themes discussed in chapter 5:

Foundational principles:

- integrated and inclusive framework
- comprehensive, consistent and coordinated design and content
- accessible, transparent and enforceable processes
- resourced, interconnected and responsive support services
- collaborative links with external sexual assault services
- institutional commitment to prevention framework

Enabling themes:

- visible university leadership
- comprehensive student engagement
- sustained commitment to cultural change.

Applying these principles and themes can both inform policies, procedures and practice in relation to university sexual assault and harassment and support their effective implementation.

Systemic recommendations

1. To ensure a national focus on Australian university efforts to address and prevent sexual assault and harassment, sexual violence in Australian university settings should be incorporated within a National Priority Area under the Fourth Action Plan (from 2019) of the *National Plan to Reduce Violence against Women and their Children 2010–2022*.
2. To ensure that Australian universities meet minimum standards and promote best practice in responding to issues around sexual assault and harassment, the Tertiary Education Quality and Standards Agency (TEQSA) should develop Guidance Notes in relation to existing Standards 2.3 (Wellbeing and Safety) and 2.4 (Student Grievances and Complaints) of the *Higher Education Standards Framework (2015)* to provide greater clarity to universities in interpreting and applying these Standards as they relate to Australian university efforts to address and prevent sexual violence.

TEQSA's quality and compliance assessments should include a specific focus on universities' management and reporting of sexual assault and harassment with reference to the Threshold Standards 2.3 (Wellbeing and Safety), 2.4 (Student Grievances and Complaints) and 6.2 (Corporate Monitoring and Accountability).

3. Universities Australia should establish a national cross-university taskforce to implement the recommendations from both this report (*On Safe Ground: Strengthening Australian University Responses to Sexual Assault and Harassment (A Good Practice Guide for Australian Universities)*) and the Australian Human Rights Commission's report (*Change the Course: National Report on Sexual Assault and Sexual Harassment at Australian Universities*). The taskforce should focus on ensuring the consistency of policies, procedures and practices across Australian universities and should facilitate the exchange of good practice strategies and sexual violence prevention training initiatives.
4. To monitor developments and track progress against the findings of 2016 *National University Student Survey on Sexual Assault and Sexual Harassment*, an independent national student survey – preferably funded by the Australian government – should be implemented every three years, with the second national survey being implemented in 2019. The survey should be undertaken by an independent organisation with the relevant expertise, such as the Australian Human Rights Commission or another appropriate body. The survey must incorporate consultation with student representatives and be conducted during a period in the academic year that avoids student examination and holiday times.
5. State and territory governments should review the legislative frameworks regulating the relationship between Australian universities and university colleges, halls and residences with a view to enacting requisite amendments or repeals of authorising Acts to ensure that residential college operations and personnel are unequivocally brought within the application of university policies relating to sexual assault and harassment.

University sexual assault and harassment policies and procedures

6. Australian university policies and procedures directed at responding to and preventing sexual assault and harassment should be a specific component of a broad institutional framework or plan that reflects a commitment to gender equity, diversity and inclusivity and to addressing gender inequality, gender-based discrimination and other underlying causes of sexual violence. The framework must be accessible and transparent and universities should regularly engage with staff and students to ensure its relevance and application.
7. Australian universities should establish formal student advisory mechanisms and ensure student representation on relevant committees to enable consistent and substantive student engagement with university leadership in the formulation and evaluation of sexual assault and harassment policies, support services and prevention programs. Student participation should reflect the diversity and distinct needs of the student population.
8. Australian universities should ensure the visibility and transparency of their sexual assault and harassment policies, reporting mechanisms and student support services through clear and prominent signposting on university websites, in university publications, and at appropriate campus locations. This information should be made available in different languages.
9. Australian universities should develop a stand-alone policy for responding to sexual assault and harassment that includes a prominent statement of express prohibition and clear definitions of proscribed conduct; provides reporting mechanisms that guarantee anonymous and confidential reports of sexual violence; and incorporates simple, fair, accessible and robust procedures founded on principles of natural justice that support the prompt and appropriate investigation of complaints. The policy should provide undertakings regarding privacy, confidentiality and the secure storage of information.

The policy should be sensitively framed and culturally appropriate and should apply to staff and students across all sites of university-related activity, including residential colleges, offshore campuses, university-affiliated travel, internship programs and the use of online technology.

The policy should clarify the difference between internal disciplinary processes and external criminal investigations, and specify how complaints are handled internally by the university pending any criminal investigation. The policy should specify interim measures available to students during the internal investigation of a complaint. In constituting disciplinary hearing panels or committees established to adjudicate complaints of sexual violence, universities should appoint individuals who have relevant expertise and experience and who reflect the diversity of the student population.

The policy should be subject to regular monitoring, evaluation and revision, as appropriate.

10. To coordinate responses to, and administer reports of, sexual assault and harassment, Australian universities should implement a centralised mechanism to facilitate consistent and comprehensive processes for reporting, make referrals to student support services, systematically record data, track investigations and disciplinary processes, disseminate information, manage relationships with external services, and monitor the implementation and regular review of policies.

11. To ensure the effective implementation and enforcement of policies, relevant university staff – including university-designated first responders – should be fully apprised of university policies and available student support services and should be trained to respond sensitively and appropriately to disclosures and reports of sexual assault and harassment.

Student support services

12. To provide a single point of entry for victims of sexual assault and harassment, Australian universities should establish an integrated sexual violence support service on university campuses. This service should provide holistic support for victims of sexual assault and harassment, potentially providing for the co-location of therapeutic and academic support services required by victims – such as medical, counselling, legal, academic and accommodation support.

The service should be staffed by trauma-informed sexual assault practitioners who are equipped to provide crisis intervention and support; accompaniment of victims to hospitals or specialist medical services; initial advice on various reporting processes; and assistance in relation to academic support (such as special consideration) and accommodation arrangements. The staff should be skilled in responding appropriately to the needs of students with disability, students from culturally diverse backgrounds, and those who identify as trans and gender diverse.

Australian universities should provide adequate and sustainable funding to support sufficient numbers of appropriately trained staff in the service, and the provision of a 24-hour telephone service to support students after hours or on weekends, or students who might be at an off-campus location or feel uncomfortable with the prospect of a face-face interaction with university staff or agencies.

13. To supplement internal student support services, Australian universities should establish collaborative links with external agencies – including local police sexual offences units, sexual assault units at local hospitals, domestic violence and sexual assault services, and women’s legal centres. These relationships can help to coordinate, improve and expedite the investigation and management of sexual violence cases and can provide a platform for sharing resources, particularly around the development of prevention strategies.
14. Australian universities should review their policies governing the application by students for special consideration and amend policies as necessary to take account of the potential impact of sexual assault and harassment on a student’s academic performance. Relevant university staff should be appropriately trained to facilitate these requests and to accommodate the student’s immediate or long-term academic needs (for example, reschedule class or tutorial times, extend deadlines and expedite applications).
15. Given the proximate nature of the living arrangements within Australian university residential colleges, college staff and students in leadership roles should be trained to sensitively manage the concerns and needs of victims of sexual assault and harassment, friends/associates, bystanders and alleged perpetrators. Residential colleges should ensure the availability of alternative accommodation to enable an expeditious change in living arrangements in order to minimise contact between the respective parties.

Prevention strategies

16. Australian universities and residential colleges should implement evidence-based sexual violence prevention education programs that are specifically designed for the student-university environment, relevant and applicable to diverse student groups, and delivered by professionally trained experts.

These programs should be delivered as widely as possible within the university, and should be particularly encouraged for staff and students in leadership and pastoral care roles.

Sexual violence prevention education programs should be delivered via diverse methods, including online and face-to-face. They should cover topics such as definitions of sexual assault harassment and consent, sexual ethics, bystander intervention, responding to disclosures, and myths around sexual violence.

Sexual violence prevention education programs should be conducted over multiple periods rather than in single sessions, and must be implemented each year to cover new student intakes and changes in university leadership and staff.

Such programs should be regularly evaluated to ensure ongoing utility.

17. Given the association between alcohol consumption and sexual violence in university settings, Australian universities and residential colleges should review policies and practices relating to the pricing, availability and service of alcohol on university campuses, at university events, and in residential colleges to ensure the responsible service and consumption of alcohol and to minimise the potential for harmful behaviour.
18. Australian university student codes of conduct and residential college codes of conduct or charters of rights and responsibilities should be reviewed and revised to ensure that they explicitly outline expectations, rights and responsibilities, and sanctions in relation to sexual assault and harassment.

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