

Grounds for concern: an Australian perspective on responses to sexual assault and harassment in university settings

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Introduction

... it 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, President, Student Representative Council, University of New South Wales, 2016)

In August 2017, the Australian Human Rights Commission (the Commission) released a report on its findings and analysis of the first national student survey on sexual assault and harassment in Australian universities. The report, *Change the Course: National Report on Sexual Assault and Sexual Harassment at Australian Universities (Change the Course)*, provided a significant indication of the nature and extent of university sexual violence. More importantly, it revealed widespread student dissatisfaction with university responses to reports of sexual violence, the adequacy of support services, and the utility of prevention measures.

In relation to prevalence, the report found that 51% of student respondents were sexually harassed in 2016, with 26% reporting sexual harassment in a university setting. A further 6.9% reported sexual assault in 2015 or 2016, with 1.6% of respondents reporting sexual assault in a university setting (Australian Human Rights Commission, 2017: 3–4). Importantly, the report also found that the vast majority of student respondents who reported sexual harassment or sexual assault did not make a formal complaint to their university.

The release of the Commission's report was a milestone in the struggle to address and prevent sexual harassment and sexual assault in Australian universities. However, the 2017 report was released decades after student activism first brought these issues to the attention of universities (Australian Human Rights Centre, 2017a: 15). Moreover, the report was published six years after the Commission's review into the treatment of women in the Australian Defence Force Academy (ADFA), an academic facility operated jointly with the Department of Defence which warned that sexual harassment and assault was 'a problem across Australian universities' and that ADFA was 'not alone in facing these challenges.' (Australian Human Rights Commission, 2011: 33, xxv).

Despite these efforts to compel university action, it was not until the Australian release of *The Hunting Ground* documentary in 2015, and a series of interventions discussed in this chapter, that Australian universities collectively undertook to address campus sexual violence. Although the documentary highlights the problem of sexual assault and harassment in American universities, it has also functioned as a visual reminder of a struggle waged by Australian student and gender activists and as a critical 'disrupter' of university complacency, resurrecting the issue of sexual violence as a priority for Australian university leaders and representative bodies such as Universities Australia. Importantly, the documentary triggered a national conversation about the issue and reframed its focus from individual student misconduct to institutional failure.

This chapter provides an Australian perspective on developments in universities to sexual assault and harassment based on our experience in developing and implementing the *Strengthening Australian University Responses to Sexual Assault and Harassment* project. The chapter does not focus on the scale of sexual assault and sexual harassment in Australian universities (despite its disquieting presence). Rather, it seeks to explore the progression of institutional responses from disavowal or bureaucratic opacity to more proactive and pre-emptive measures. It examines the shift in university and government responses to an issue that has long been overlooked in Australian legal and policy responses to gender based violence. We argue that in a comparatively short period, Australian universities have taken steps to enable a national student survey and submission process, enhance reporting procedures and support services, publicly denounce campus sexual violence, and commit to certain prevention strategies.

However, despite these initiatives, the capacity of universities to effectively respond to student needs continues to be constrained by

structural barriers and the protection of institutional interests. The chapter ends by highlighting challenges that Australian universities must address if the critical gains secured from the implementation of the national student survey and the release of three major reports and their recommendations are to effectively reshape Australian university responses to campus sexual violence.

Recognising the problem of sexual violence in Australian universities: a long and winding road

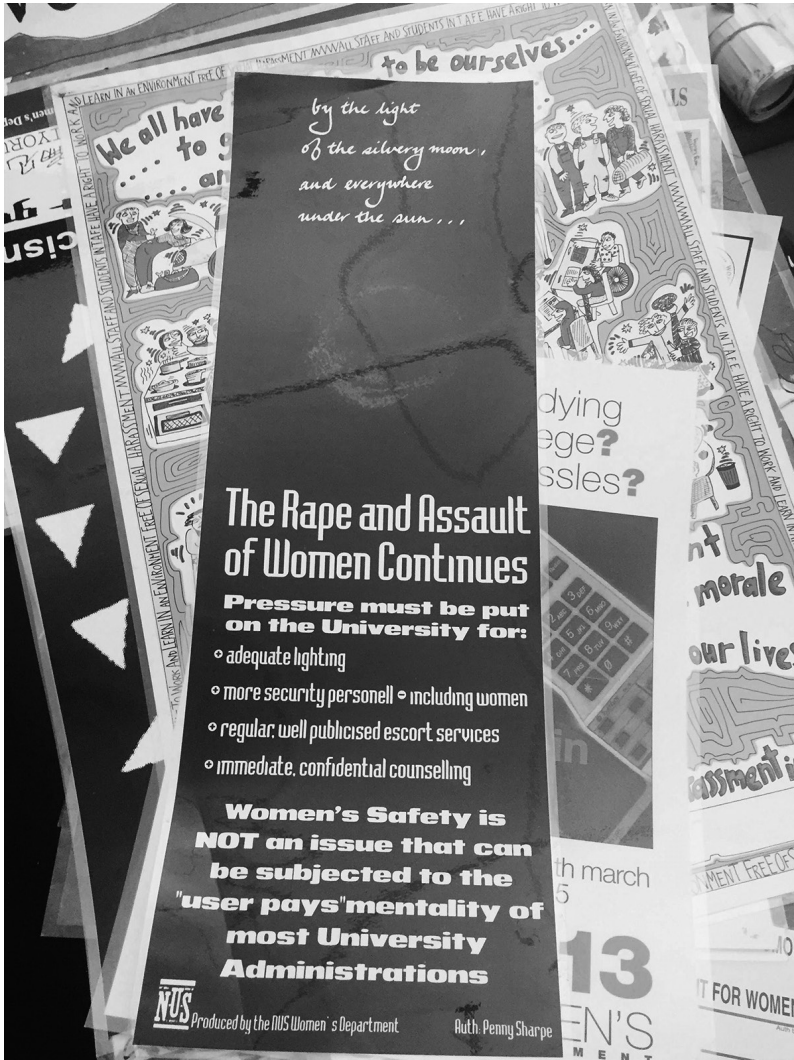
Universities are complex environments. About three in five Australian university students are under 24, many are away from home for the first time, and there's a vibrant social life on campus. We know too that 18- to 24-year-olds are the group most likely to drink harmful levels of alcohol on a single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

In her 2016 book *My Life on the Road*, Gloria Steinem writes about the evolution over decades of American university administration responses to 'sexualised violence on campus'. She recalls that many universities 'obscured the rates of sexual assault, in order to protect a campus reputation and encourage parents to send their daughters' to certain universities (Steinem, 2016: 98–9). Steinem describes how students, who were previously arrested on charges of vandalism for 'painting a big red X on sidewalks wherever a woman had been sexually assaulted,' now have access to Title IX legislation to 'threaten campuses with the loss of federal funding if sexual assault creates an environment hostile to women's education' (p 99).

In Australia, allegations of universities obscuring rates of sexual assault have been similarly surfaced in recent years (End Rape on Campus, 2017). These allegations follow decades of advocacy by women students and NGOs to expose, address and prevent campus sexual violence. While this activism began with calls for improved infrastructure such as 'adequate lighting, more security personnell (sic) [and] immediate, confidential counselling' (Figure 4.1), more recent action has seen the National Union of Students (NUS) conduct two student surveys on sexual violence and reporting experiences in university settings in 2011 and 2015. These survey results have led the NUS to make recommendations for institutional responses including campaigns to challenge gender stereotypes, respectful relationship training for students and campus residents, adequate training and resources for sexual violence counsellors, clear and accessible reporting procedures, stand-alone sexual violence policies, and accessible information on

external services such as rape crisis centres, legal aid, and police (NUS, 2011, 2016).

Figure 4.1: Poster produced by the NUS Women's Department, 1994 (courtesy of Heidi La Paglia, NUS Women's Officer, 2016)



Although Australian student activism led to minimal and uneven changes in university responses over the years, unlike developments in the US, these efforts have yet to translate into substantive legislative or policy reforms to specifically address university sexual violence (Australian Human Rights Centre, 2017a: 43–6). In the policy realm,

the 12-year *National Plan to Reduce Violence against Women and their Children 2010–2022* commits to ‘sharpen[ing] our focus on sexual violence’ (Commonwealth of Australia, Department of Social Services, 2016: 24). However, universities and campus sexual violence have not been the subject of specific consideration under the Plan to date (see Australian Human Rights Centre, 2017a: 47). At the state level, and clearly in response to recent initiatives, the New South Wales Minister for the Prevention of Domestic Violence and Sexual Assault conducted a university students sexual assault consultation in mid-2017 as part of the development of a Sexual Assault Strategy (NSW Family & Community Services, 2017).

As noted above, the issue of sexual violence in university settings was also highlighted by the Commission’s 2011 ADFA review. The review, based on the results of an internal ‘unacceptable behaviour survey’, identified institutional features that discourage the reporting of sexual misconduct in ADFA, including fear of stigmatisation, retaliation or prejudicing career progression (Australian Human Rights Commission, 2011: 72–83). It also found that the existence of a ‘drinking culture’ was clearly associated with ‘unacceptable behaviour, including sexual misconduct’ (p 45). As mentioned, the Commission’s review report observed that these features were not necessarily unique to ADFA and had broader application to other universities (p 34). It also noted the potential utility of developing its survey in collaboration with other universities and colleges, ‘in order to provide meaningful comparisons’ (p xxv). This recommendation remained dormant until the release of *The Hunting Ground* in Australia in 2015 prompted a return to the recommendation and the subsequent design and implementation of the national student survey, which we discuss later on in this chapter.

The screening of the documentary across Australian university campuses in 2015 and 2016 also had broader effects beyond the development of the national survey. It generated a significant increase in Australian media reporting of incidents of sexual violence in university settings, many of which highlighted the frequently inept, deficient, often dismissive and damaging responses from universities which highlighted the critical need for transformation. The three recent incidents below (all of which were covered in the media) highlight the patterns of these responses which were reinforced by responses to the national student survey. When a male student who was allegedly sexually assaulted by another male ‘classmate’ in 2016, the University of Wollongong advised the complainant to ‘change his own behaviour’ when he requested that the alleged perpetrator be moved from his tutorial group. Shifting responsibility for preventing further

incidents from the alleged offender to the complainant, the university provided the complainant with a 'safety plan' which included advice on minimising contact with the alleged perpetrator and recommended that he '[w]alk in groups of two or more after dark' (Funnell, 2016), reinforcing the myth that a perpetrator is more likely to be a 'stranger' than known to a victim (see End Rape on Campus Australia, 2017: 6). In the absence of appropriate university action, the student secured an apprehended violence order against the alleged perpetrator and eventually withdrew from the university, observing that his sexual assault and the response from the university were 'equally despicable. There is a shocking correlation between someone (the perpetrator) not listening to you say "stop" and an organisation (the university) not listening to you scream "help"' (Funnell, 2016).

Six months after a woman student was sexually assaulted in her room in a residential college at the University of Sydney in 2016, she was still awaiting the outcome of the university's investigation, filled 'with anxiety constantly that I may see him (her alleged perpetrator)'. A week after reporting the incident to her university, she was requested to complete a generic online form to explain why she had 'not taken steps to resolve the matter'. The student had to actively seek out any information relating to the procedures employed to determine her complaint and its progress and when she did ascertain details, she was directed by the university to keep the matter 'confidential' (Rooke, 2016).

A third example concerns a staff member at James Cook University (JCU) in northern Queensland who was charged with the rape of a woman student in 2015 (Chen, 2017). Following his arraignment, the alleged perpetrator was promoted from a research officer to an academic advisor in a university research centre and after pleading guilty to the charge, he remained in the role for three months. Despite the university's assertions that they were unaware of the charge or conviction, a member of university staff provided a character reference for the convicted perpetrator in mitigation of his sentence.

While *The Hunting Ground* depicts cases of university cover-ups in relation to claims of sexual assault and harassment at American universities, this problem does not appear to be widespread in the Australian context, despite allegations that universities have 'played down' the significant numbers of 'official complaints of sexual assault and harassment' (Bagshaw, 2017). However, as the above case studies and the subsequent national students survey data illustrate, the response of Australian universities has been deficient in other ways. In particular, 'first responders' to complainants of sexual assault, including security

staff, academic staff, and campus counsellors, did not always refer students to the appropriate reporting channels and support services, and following questioning, students were sometimes made to feel that they are to blame, or that their experience has been trivialised. In addition, where students reported sexual harassment to university staff, they were told that the alleged perpetrator ‘might just fancy you’, to ‘take [the conduct] as a compliment’, or that it was ‘just the culture ... get used to it’ (Australian Human Rights Commission, 2017: 148; see also NUS, 2016: 26).

Strengthening Australian university responses: initial steps

A key response to the increasing accounts of university sexual violence, largely triggered by screenings of *The Hunting Ground* documentary at universities across Australia and the work of The Hunting Ground Australia Project, was the development of the *Strengthening Australian Responses to Sexual Assault and Harassment* research project, launched in September 2015 by the Australian Human Rights Centre (AHRCentre) at the University of New South Wales. The main aims of the project were to:

- identify the extent and nature of sexual assault and harassment in Australian university campuses;
- evaluate the experiences of students who report sexual violence to their university; to identify any barriers to reporting;
- highlight institutional responses that may entrench or prolong a culture where sexual violence is normalised, silenced, or excused; and,
- drawing on empirical data and comparative international research, provide a guide to Australian universities of good practice policies and procedures for their adaptation and application.

Throughout the project, we sought to amplify the voices of students from diverse backgrounds, including female students, international students and students who identify as LGBTIQ. While the project drew on comparative international research in identifying models of good practice, this foregrounding of Australian student voices ensured that the project conclusions and recommendations were directed to meet their needs.

Taking our lead from the student surveys conducted by the NUS in 2011 and 2015, as well as the Commission’s ADFA survey, our

initial task was to partner with the Commission to design the first national student survey (the national survey) on responses to sexual harassment and sexual assault in Australian universities. Through working with student representatives, the NUS, and sexual violence experts in developing the survey, we also sought to encourage sector-wide dialogue on responses to sexual misconduct in university settings, identify weaknesses in university procedures and practices, and build their capacity to prevent and respond to these behaviours.

The national survey, which secured ethics approval from the University of New South Wales Human Research Ethics Committee in August 2016, was sent to a randomly-selected cohort of 60,000 students across all 39 universities on an anonymous, confidential and voluntary basis. The Commission's analysis of survey responses from 30,000 students and qualitative data contained in over 1,800 written submissions received by the Commission from students and organisations during the period 23 August 2016 to 2 December 2016 (see, for example, The Hunting Ground Australia Project, 2017b), formed the basis of the public report, *Change the Course*, released in August 2017. Individual university reports were made available to each university on a confidential basis. Following interest in individual university results from media and student representatives, and encouragement from Australia's Sex Discrimination Commissioner, all 39 universities agreed to release their respective survey results (for example, Clure, 2017; Wahlquist, 2017). The *Change the Course* report revealed indicative data on the prevalence of sexual assault and harassment among Australian university students in 2015 and 2016, the characteristics of victims and perpetrators of sexual assault and sexual harassment, the sites or settings at universities where sexual assault and harassment occurred, the adequacy of reporting channels and support services and students' recommendations for change.

In analysing this prevalence data, the Commission observed that the 'prevalence and nature' of sexual assault and harassment in a university setting primarily corresponded with figures relating to sexual violence in the broader Australian community (Australian Bureau of Statistics, 2015), and that women aged between 18 and 24 (the age group largely reflective of the university student cohort) experienced sexual assault and harassment 'at over twice the national rate' (Australian Human Rights Commission, 2017: 4). The Commission also identified a number of factors that contributed to the perpetration of university sexual assault and harassment, including discriminatory attitudes towards women, the excessive use of alcohol, the abuse of a position

of power by perpetrators, and ‘easy access to bedrooms’ in residential settings including colleges and university camps (p 5).

The report’s other key findings include that: university colleges, grounds, teaching spaces, social events and transport to and from universities were the primary sites of sexual assault and harassment (p 8); women ‘were almost twice as likely to be harassed’ and ‘more than three times as likely to be sexually assaulted’ than men (p 7); and ‘overwhelmingly, men were the perpetrators of both sexual assault and sexual harassment reported in the survey’ with a ‘significant proportion’ of student victims knowing the perpetrator, who was ‘most likely to be a fellow student from their university’ (p 4). The report also found that ‘the vast majority of students who were sexually assaulted [87%] or sexually harassed [94%] in 2015 and 2016 did not make a formal report or complaint to their university’. Their reasons for not reporting included a fear that they would not be believed by the university, a perception that the conduct was ‘not serious enough’ to warrant making a report, a lack of confidence in their understanding of the concepts of sexual harassment and sexual assault, and concerns that the reports would not be treated confidentially and that no action would be taken (pp 140–45). Additional reasons included a fear of being victimised or discriminated against (for LGBTIQ students), and a confusion about whether the experience was ‘just part of Australian culture’ (for international students) (p 146). These responses suggest several concerning findings: a lack of trust by student victims in institutional procedures and practice; an acceptance or normalisation of conduct which is degrading, potentially unlawful, and frequently damaging and enduring in its impact; and additional reporting barriers for marginalised or vulnerable groups. The report further noted that both ‘structural and attitudinal barriers’ prevented students from reporting or seeking support, and that ‘students who did report were often unsatisfied with the response of their university’ (p 4).

The *Change the Course* report contains nine recommendations directed at universities and university colleges:

- the development of communication and educational strategies to prevent discriminatory conduct and sexual violence;
- dissemination to staff and students of internal and external reporting processes and support services;
- training of ‘first responders’ to disclosures of sexual assault and harassment and the provision of specialist support by expert practitioners;

- confidential collection and storage of reports of sexual assault and harassment and regular reviews of the effectiveness of university reporting procedures and support services;
- an independent expert-led review of the factors underlying the prevalence of sexual violence in residential colleges; and
- the conduct of the national student survey every three years to track progress in reducing university sexual violence.

Soon after the release of *Change of the Course*, the AHR Centre published its two project reports. The first report, *Local Perspectives: A case study on responses to sexual violence in a university setting*, presented the findings of a localised qualitative study of our own university, based on an initial review of its policies covering the management of sexual assault and harassment, and interviews with a sample of relevant individuals including university staff, student representatives and a former state Director of Public Prosecutions. A key reason for undertaking the *Local Perspectives* case study was to look critically at our own institutional policies and practice before tackling the need for change more broadly. It highlighted a number of weaknesses within a specific university framework that were similarly revealed in the national student survey, such as the need for a clear and accessible stand-alone policy on sexual violence and express institutional statements prohibiting sexual violence; disincentives to reporting incidents of sexual assault and harassment; a lack of clarity about the relationship between internal disciplinary mechanisms and external criminal justice proceedings; and deficient support services.

Our second report, *On Safe Ground: A good practice guide for Australian universities*, sought to provide Australian universities with a conceptual framework and practical recommendations for preventing and responding to sexual harassment and assault. It was informed by the Commission's report on the national survey and comparative international research on university good practice in addressing and preventing reports of sexual assault and harassment. The report details six foundational principles that should underpin all Australian university policies and procedures and argues that without visible senior university leadership, meaningful and formalised engagement with students and sustained, long-term institutional commitment, any policies adopted by universities will be of limited value, particularly if the institutional culture that enables sexual assault and harassment goes unchallenged (Australian Human Rights Centre, 2017a: 63–8).

The report's ten chapters include a comparative analysis of the legal and policy frameworks that govern university sexual assault and harassment

in a number of countries (for example, the US, the UK, Canada, India and South Africa; pp 33–51) which underscores Australia’s distinct lack of an explicit legislative framework and highlights the comparatively weak institutional arrangements at Australian universities for managing and preventing sexual violence (p 10). *On Safe Ground* makes 18 recommendations, including proposals for government and regulatory intervention, as well as recommendations to universities in relation to the implementation of accessible and consistent reporting processes, the enforcement of disciplinary action and sanctions, the provision of specialised and properly resourced student support services, and the delivery of evidence-based sexual violence prevention and bystander programmes.

The commitment by all 39 Australian universities to participate in the national survey was a significant demonstration of a collective imperative to address the ‘concerning picture of the nature and prevalence of sexual assault and sexual harassment experienced by Australian university students’ painted by the Commission’s analysis of the survey data (Australian Human Rights Commission, 2017, p 3). The section below considers some of the responses to the national survey and the reports and recommendations outlined above.

Towards institutional change: recent developments

Until recently, many Australian universities have expressed ambivalence about their role in addressing assault and sexual harassment (Funnell, 2016; End Rape on Campus Australia, 2017; Rooke, 2016). At a broad level, there has also been a reluctance by universities to acknowledge the prevalence of sexual assault and harassment on university campuses, and therefore to provide sufficient training and resources for support services, and to improve processes for lodging and resolving complaints. While the reasons for this apparent disavowal of responsibility to proactively address campus sexual assault and harassment vary, they suggest a discomfort with regulating student (and staff) conduct ‘beyond the ivory tower’ (Bok, 1982) and a failure to acknowledge that the responsibilities of a university extend into areas of human interaction beyond the purely ‘academic’ sphere. Other contributing factors may include a concern with protecting institutional reputation and limiting legal liability.

At the launch of the national survey in August 2016, the then Chair of Universities Australia and Vice-Chancellor of Western Sydney University, Barney Glover, spoke of the ‘damage caused by sexual harassment and sexual assault [that] cannot be undone’ (Maniaty, 2016).

Professor Glover acutely observed that this harm may have an impact beyond the serious physical and emotional consequences for a student, prejudicing their capacity to learn, achieve academic progression and participate in university life – and even triggering a withdrawal from a course or their degree. Perhaps this public acknowledgement of the long-term harms of sexual violence – and a recognition of a university's duty of care towards its students and the potential exacerbation of harm by insensitive or dismissive management of incidents of student sexual assault and harassment – has seen the incremental development of institutional initiatives by some Australian universities aimed at more effective and sensitive management of reports of sexual violence, and its prevention.

Given that the reports discussed above were released in August 2017, it is premature to expect any major developments from universities in response in the short to medium term. However, some initial indications have seen a commitment to implement the recommendations made in the various reports referred to above, as well as attitudinal adjustments within the university sector which acknowledge that their responsibility to prevent and respond to sexual assault and harassment also ties in with a university's broader commitment to equity, diversity, and inclusion. As detailed in the *On Safe Ground* report, legal and regulatory obligations require universities to provide inclusive and non-discriminatory learning environments (Australian Human Rights Centre, 2017a: Chapter Three). Given findings by the Commission that victims of sexual assault and harassment in university settings are predominantly female, and that international and LGBTIQ students are also at increased risk of experiencing these behaviours and/or having negative reporting experiences, these obligations may now assume greater significance.

In addition to the campus screenings of *The Hunting Ground* documentary, the increased public affirmations by universities to actively prevent and respond to sexual harassment and assault were also influenced by the launch of the *Respect. Now. Always* campaign by Universities Australia in February 2016 (Universities Australia, 2016) and the implementation of the national survey. In the period between the release of the documentary and the publication of the various reports referred to above The Hunting Ground Australia Project surveyed a number of different universities and tracked their activities which they published in two Progress Reports in 2016 and 2017. These activities have included the drafting of stand-alone sexual assault and harassment (or sexual misconduct) policies; enhanced signposting of student misconduct policies and support services on their websites

to provide clearer access to relevant information; training of staff and students who may receive initial disclosures or reports of incidents of sexual assault and harassment; the development of educational resources about what constitutes unacceptable behaviour and key bystander actions; and the introduction of a sex and ethics training programme for residential assistants and college social coordinators and student leaders from academic, sporting and cultural bodies with a view to embed aspects of the training ‘into orientation and induction briefings for students each year’. (The Hunting Ground Australia Project, 2016: 6–11; The Hunting Ground Australia Project, 2017a: 12–18).

As an initial response to the release of *Change the Course*, Universities Australia announced the establishment of a ‘10-Point Plan Action Plan’ which outlined some broad prevention, awareness and support initiatives, including the establishment of an interim 24/7 specialist support line for student victims and survivors that would operate for a few months following the release of the national survey. (Universities Australia, 2017: 19). While these ten broad actions reflected many of the recommendations detailed in the reports referred to above, to the disappointment of some student advocates, the Plan made no mention of the importance of rigorous disciplinary procedures and sanctions for students found to have breached university policies relating to sexual assault and harassment (Funnell and Hush, 2017) or the ‘effective enforcement of policies’ and the ‘dissemination of disciplinary outcomes within the university community’ as key components of a viable prevention strategy (see Australian Human Rights Centre, 2017a: 80).

At a regulatory level, the Australian Tertiary Education Quality and Standards Agency (TEQSA), an independent statutory authority, responded almost immediately to a recommendation by the AHR Centre (see Australian Human Rights Centre 2017a: 48–9). TEQSA requires universities to meet certain Threshold Standards relating to student equity, wellbeing and safety, grievance and complaints procedures, and monitoring and accountability compliance. Failure by universities to meet these standards can result in TEQSA revoking their registration. While university management of sexual violence was not initially referenced in these standards, a proposed revision of certain Threshold Standards by TEQSA subsequent to the release *On Safe Ground* incorporates reference to sexual assault and harassment as a distinct proposed focus of university management and reporting responsibilities (Australian Government, 2017). In addition, soon after the release *Change the Course*, the Federal Minister for Education and Training, Senator Simon Birmingham, wrote to each university to seek their response to the Commission’s findings and recommendations ‘given

their legal obligation to provide a safe learning environment'. The Minister undertook 'to work with universities to ensure they address the findings and recommendations' of the Commission's report and 'implement changes that will make them safer and more inclusive environments in the future' (Birmingham, 2017).

In the past few years, the issue of weak institutional responses to sexual violence in universities has finally secured national attention, driven by the Australian release of *The Hunting Ground*, along with the national student survey, campaigns by NUS, The Hunting Ground Australia Project, and Universities Australia, increased media reporting and calls for the implementation of recommendations contained in reports by the Australian Human Rights Commission and the AHRCentre. The decision by some students to discuss their experiences of sexual harassment and sexual assault on social media, and/or to reach out to journalists, has further drawn attention to this issue. Although universities have begun to take practical steps to address this issue, a number of more long-term challenges that are far more difficult to address – such as entrenched attitudes that contribute to sexual assault and sexual harassment, the risks posed by the shift to online learning and social media, limitations imposed by the conventional 'victim narrative', the preservation of key institutional interests and a deference to the criminal justice system – may remain extant, especially in the absence of a sustained national focus on the issue and student activism (despite annual student turnover) that continue to hold universities to their commitments.

Key challenges

Ambiguities under dual systems of investigation of sexual misconduct

Unlike the criminal justice system, which is directed at the determination of culpability and sentencing in accordance with established criminal law criteria and standards, the internal disciplinary procedures that universities (and their residential colleges) employ to address allegations of sexual assault or harassment are primarily aimed at breaches of university policy and the moderation of institutional risk, with internally devised procedures and sanctions ranging from expulsion from a university (or college) and removal from leadership roles, to suspension from particular classes. The existence of these dual processes and procedures with their differing rationales can give rise to ambiguities in applicable standards of proof, procedures for

complaint evaluation and outcome: the criminal justice system requires the prosecution to prove an offence beyond reasonable doubt, whereas the university's disciplinary system will usually have a lower standard of proof and 'less adversarial adjudicative processes' (Sheehy, 2017: 37). More importantly, as the surveys by the Commission and the NUS have made clear, the often opaque administrative disciplinary processes developed by universities lack clarity, consistency and certainty, often exacerbated by the absence of stand-alone policies on sexual assault and harassment which are merely embedded in generic student misconduct provisions. This creates confusion for those tasked with managing complaints, can potentially deter students from making a complaint in the first place, and may exacerbate harm by requiring victims to narrate their experience multiple times (Australian Human Rights Centre, 2017a: 48, 53–54).

In Australia, the disincentives underlying student reporting of cases of sexual assault are further complicated by a statutory obligation arising in most states to refer such reports to the police. For example, under New South Wales (NSW) criminal law, sexual and indecent assault constitute a 'serious indictable offence' and any person who fails to report information relating to such an offence 'without a reasonable excuse' may face a term of imprisonment. This provision goes further than requiring those who receive information on sexual assault to contact the police; it makes criminal a failure to report such information (Australian Human Rights Centre, 2017b: 23). This offence was introduced in 1990s, along with several other offences aimed at preventing interference with the criminal justice system (NSW Parliamentary Debates, 1990: 3691). In 1998, in response to concerns expressed by the NSW Law Reform Commission, the provision was amended to specify that certain persons, including healthcare providers, could not be prosecuted under this provision without the approval of the Attorney General. This amendment did not satisfy the Law Reform Commission, which recommended that the provision be repealed because it might prevent victims from seeking care because they feared police involvement (NSW Law Reform Commission, 1999). Despite this concern, the provision remains in place.

Students may therefore also be reluctant to report cases of sexual assault if university staff are legally obligated to refer these to the police, potentially with adverse consequences for the complainant (for example public exposure, protracted and invasive police investigations). In order to respect victims' agency, and enable them to make an informed choice about which details (if any) to disclose, it is essential that university policies clearly articulate the relationship between the

university's disciplinary process and the criminal justice process and that first responders and those responsible for managing complaints, demonstrate clarity to complainants about their role and obligations vis-à-vis the police. In addition, where victims are adamant that a university staff member does not convey the information to the police, the university may require that provider to take a written statement from the victim to this effect, in order to respect of the victim's wishes while protecting the university staff and the university itself (Australian Human Rights Centre, 2017b: 24).

Online learning, social media and the regulation of 'technology-facilitated sexual violence'

As new technology accelerates access to online university education, the risk of 'technology-facilitated sexual violence' increases with corresponding imperatives for universities to develop effective institutional responses to this form of sexual assault and harassment (Henry and Powell, 2016). Examples of technologically facilitated sexual violence include 'threats of rape and virtual rape, online sexual harassment and cyberstalking, the use of Facebook groups to promote rape-supportive attitudes, the posting of degrading, sexually based comments about female students and teachers' (Henry and Powell, 2016: 84–5). The case that largely triggered the ADFA Review mentioned above concerned the covert filming and distribution via Skype of consensual sex by a male cadet (with a female cadet) to his colleagues in a neighbouring room, without the woman's knowledge or consent. In the criminal proceedings brought against the male cadet (on charges of sending offensive material over the internet without consent and committing an act of indecency) (Willis, 2013), the complainant stated that she 'had been offered no support by the Defence Force, ... that she was told police did not regard the incident as a crime under ACT (local) law' and that the matter would not be investigated internally 'as it was not serious enough' (Knaus, 2013). After being sentenced to two 12-month good behaviour bonds, the perpetrator was permitted to resume his studies at ADFA; however, following an internal inquiry (and significant media attention on the Defence Force) he was expelled from the Academy a month later, his conduct viewed as 'inconsistent with the Army's values and the standards expected of a member of the Defence Force' (ABC News, 2013).

As mobile and online technology provide new modes for perpetrating sexual misconduct, universities face the challenge of capturing behaviour within their own policies that may not necessarily align

with definitions of sexual violence but has similarly deleterious consequences. In addition, they will need to determine how to respond to forms of 'cyber-sexual violence and online sexual assault' (Sheehy, 2017: 37) by devising processes of investigation, accountability and sanctions that are suitable support services and reflect legal and policy developments in a relatively new area of regulation. Equally, universities face the challenge of assessing the nature and impact of the harm caused by technologically facilitated sexual violence in order to implement or adjust suitable support services and fashioning online prevention strategies.

Limitations of the conventional 'victim narrative' in designing and revising models of institutional response

As noted above, the *Change the Course* report indicated that many Australian university students who experienced sexual assault and sexual harassment do not report this conduct to their university. This issue was also addressed in *Local Perspectives* which indicates that students feared they might not be taken seriously or have their experience minimised because they failed to 'fit' or correspond with an assumed victim stereotype; or might attract shame from family or community due to 'cultural barriers that prevent them being able to talk about it' (Australian Human Rights Centre, 2017b: 12). These concerns are perhaps more acute when the sexual assault is incurred by an individual other than the mythologised 'real' rape victim, namely 'the morally upright White woman who is physically injured while resisting' (Du Mont et al, 2003). In particular, concerns about being believed may be heightened for men who experience sexual violence, students of colour, students from minority religions, students with disability or those who identify as LGBTIQ.

Addressing this challenge requires remedial and therapeutic services that are directed to the needs of specific student cohorts, and are clearly advertised to those cohorts in a language and format that they understand. This should include a reassurance that the service is inclusive, such as by displaying a visible statement or symbol of non-discrimination on the service website or at its premises. In addition, it requires consideration at the reporting and investigative stages of incidents of sexual assault and harassment. For example, providing students whose first language is not English with the option to provide an initial account of a sexual assault in writing (Australian Human Rights Centre, 2017a: 58–9). Sensitivity to the needs and experiences of a diverse student community is also fundamental in the design and

delivery of any meaningful prevention training programmes. The engagement of students with diverse experiences in shaping these processes and programmes will serve to make them resonant and effective.

Conclusion: from risk management to harm prevention

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 (Australian Human Rights Centre, 2017a: 117).

In 2011, Sydney journalist and member of the NSW Premier's Council on Preventing Violence against Women, Nina Funnell, wrote that although the NUS *Talk About It* survey identified sexual assault and harassment as a 'real and serious problem' on university campuses, the online self-selecting methodology employed meant that the results were open to question. Funnell concluded that given the clear manifestation of sexual violence on university campuses, 'rigorous, methodologically sound, comprehensive research' was required that would 'stand up to scrutiny'. 'But to do this,' she continued, 'universities will have to get on board. This, I suspect, will be a whole different challenge, given the continuing resistance, from colleges especially, to proper research into the vulnerability of young women on campuses' (Funnell, 2011).

Despite pockets of ongoing resistance to decades of students' activism on the issue and a tendency at times for universities to invoke 'administration by incantation' (Powell, 2014) in response to this 'real and serious problem', it is, in our view, significant that all 39 Australian universities participated in the national student survey. In addition, prior to the release of the analysis of the survey data many universities had already taken steps to evaluate, redraft or revise relevant policies, facilitate student accessibility to services, and introduce prevention training. However, the nature of sexual violence, the harm it generates and the slow progress of change, demands that Australian universities commit to a long-term approach to address sexual assault and harassment by continuing to give visibility to the issue, adapt and enhance their responses and services, monitor and evaluate policies and processes and resource a sustained programme of intervention and prevention.

Importantly, the authenticity and potential utility of this work requires the formal engagement of student leadership in the formulation

and application of policies and procedures (for example via properly resourced university advisory committees with representation from the senior university management, the student body, and academics with appropriate expertise), the assessment of support services, and the design of training programmes and campaigns if it is to yield enduring institutional impact. And equally, the doubts and discomfort often displayed by decision makers and service providers in Australian universities about their role in addressing ‘the undeniable realities’ (Maniaty, 2016) of sexual harassment and sexual assault require a fundamental shift and recognition that the systemic social and economic origins of this harm are reinforced by institutional culture.

At the 2016 Universities Australia conference, the former Australian Chief of Army, David Morrison, who oversaw the *Review into the Treatment of Women in the Australian Defence Force Academy*, noted that ‘more often than not, domestic and family violence grows out of gender inequality’ and a culture that embeds male dominance and entitlement. A change of this culture, said Morrison, requires ‘leadership ... you need to stand next to this issue; if you don’t you will find that the status quo quickly reasserts itself.’ Standing next to this issue requires that universities ‘bring [it] out into the open, place [it] under the strongest spotlight, confront [it], and develop effective strategies to tackle [it]’ (Maniaty, 2016). Following the national student survey and research undertaken by the NUS, End Rape on Campus Australia, The Hunting Ground Australia Project, the Commission and the AHRCentre, Australian universities are now on notice to name, own and rectify the problem of campus sexual assault and harassment. What is now critical is genuine and comprehensive follow-through by universities which sees them implementing improved mechanisms for reporting and addressing these behaviours, and changing a culture that enables their repeated occurrence.

References

- ABC News (2013) ‘ADFA cadet Daniel McDonald sacked over Skype sex scandal’, 8 November, www.abc.net.au/news/2013-11-09/adfa-cadet-sacked-over-skype-sex-scandal/5080834
- Australian Bureau of Statistics (ABS) *Recorded Crime – Victims, Australia, 2015*, cat no 4510.0 (13 July 2017), www.abs.gov.au/ausstats/abs@.nsf/mf/4510.0
- Australian Government (2017) ‘Sector guidance to ensure safe campuses’, <https://www.teqsa.gov.au/latest-news/media-releases/sector-guidance-ensure-safe-campus>

- Australian Human Rights Centre (2017a) *On Safe Ground: Strengthening Australian University Responses to Sexual Assault and Harassment*, www.ahrcentre.org/sites/ahrcentre.org/files/AHR0002%20On%20Safe%20Ground_Good%20Practice%20Guide_online.pdf
- Australian Human Rights Centre (2017b) *Local Perspectives: A Case Study on Responses to Sexual Violence in a University Setting*, www.ahrcentre.org/sites/ahrcentre.org/files/mdocs/AHR0001%20Local%20Perspectives_Case%20Study_online.pdf
- Australian Human Rights Commission (2011) Review into the Treatment of Women in the Australian Defence Force Academy, Phase 1.
- Australian Human Rights Commission (2017) *Change the Course: National Report on Sexual Assault and Sexual Harassment at Australian Universities*, www.humanrights.gov.au/sites/default/files/document/publication/AHRC_2017_ChangeTheCourse_UniversityReport.pdf
- Bagshaw, E. (2017) “‘Devastating’ report shows universities are ‘failing’ students”, *Sydney Morning Herald*, 22 February, www.smh.com.au/national/education/devastating-report-shows-universities-are-failing-students-20170222-guj84k.html
- Birmingham, S. (2017) ‘University sexual assault and sexual harassment’, media release, 1 August, www.senatorbirmingham.com.au/university-sexual-assault-and-sexual-harassment/
- Bok, D. (1982) *Beyond the Ivory Tower: Social Responsibilities and the Modern University*, Cambridge, MA: Harvard University Press.
- Chen, D. (2017) ‘James Cook University staffer promoted after student rape’, ABC News, 24 January, www.abc.net.au/news/2017-01-23/university-staffer-student-rape-james-cook-university-promoted/8203976
- Clure, E. (2017) ‘Human Rights Commission’s university sexual harassment survey ‘may let down students, victims’’, ABC News, 4 April, www.abc.net.au/news/2017-04-04/human-rights-commission-report-on-sexual-harrassment-questioned/8413418
- Commonwealth of Australia, Department of Social Services (2016) *Third Action Plan 2016–2019 Of the National Plan to Reduce Violence against Women and their Children 2010–2022*, www.dss.gov.au/sites/default/files/documents/10_2016/third_action_plan.pdf
- Du Mont, J., Miller, K. and Myh, T. (2013) ‘The Role of “Real Rape” and “Real Victim” Stereotypes in the Police Reporting Practices of Sexually Assaulted Women’, *Violence Against Women*, 9(4): 466–86.

- End Rape on Campus Australia (2017) *Connecting the Dots: Understanding Sexual Assaults in Australian University Communities*, <https://static1.squarespace.com/static/5762fc04f5e231826f09afae/t/58b3d08ddb29d6e7a2b8271d/1488179368580/Connecting+the+dots.pdf>
- Funnell, N. (2011) 'Claims of uni rape need proper research', *Sydney Morning Herald*, 17 June.
- Funnell, N. (2016) 'The shocking way sexual violence is handled at Australian universities' news.com.au, 29 June, www.news.com.au/lifestyle/real-life/news-life/the-shocking-way-sexual-violence-is-handled-at-australian-universities/news-story/fdb2f5d827ee8f6f4c124af11847aa25
- Funnell, N. and Hush, A. (2017) 'Unis dodge action on sexual assault offenders in 10-point plan', *Sydney Morning Herald*, 1 August, www.smh.com.au/comment/unis-dodge-a-crackdown-on-sexual-assault-offenders-20170801-gxn4jl.html
- Henry, N. and Powell, A. (2016) 'Sexual Violence in the Digital Age: The Scope and Limits of Criminal Law', *Social and Legal Studies Journal*, 25(4): 397–418.
- Hunting Ground Australia Project, The (2016) *Progress Report – July 2016*, www.thehuntinggroundaustralia.com.au/wp-content/uploads/2015/12/Progress_Report_The_Hunting_Ground_Australia_Project_July2016_e.pdf
- Hunting Ground Australia Project, The (2017a) *Progress Report – July 2017*, www.thehuntinggroundaustralia.com.au/wp-content/uploads/2017/07/Progress_Report_The_Hunting_Ground_Australia_Project_July2017_e.pdf
- Hunting Ground Australia Project, The (2017b) *Submission to the Australian Human Rights Commission's University Sexual Assault and Harassment Project – February 2017*, www.thehuntinggroundaustralia.com.au/wp-content/uploads/2017/06/The-Hunting-Ground-Australia-Project-submission-to-AHRC-University-Sexual-Assault-and-Harassment-Project.pdf
- Johnston, S. (2016) Speech by former President, UNSW Student Representative Council delivered at a screening of *The Hunting Ground* at UNSW, Sydney, 2 May.
- Knaus, C. (2013) 'Skype sex victim 'had to go public'', *Canberra Times*, 20 August, www.canberratimes.com.au/act-news/skype-sex-victim-had-to-go-public-20130820-2s8is.html
- Maniaty, T. (2016) 'Today we say with one voice: One incident is one too many', UNSW Sydney Newsroom, 23 August, <https://newsroom.unsw.edu.au/news/general/today-we-say-one-voice-one-incident-one-too-many>

- National Union of Students (NUS) (2011) '*Talk About It*' Report 2011.
- NUS (2016) '*Talk About It*' Report 2015, https://d3n8a8pro7vbm.cloudfront.net/nus/pages/144/attachments/original/1454369041/Talk_about_it_Survey_Report.pdf?1454369041
- NSW Family & Community Services (2017) 'Minister joins university students for sexual assault consultation session', media release, 7 June, www.facs.nsw.gov.au/about_us/media_releases/minister-joins-university-students-for-sexual-assault-consultation-session
- NSW Law Reform Commission (1999) *Report 93: Review of Section 316 of the Crimes Act 1900 (NSW)*.
- Powell, D. (2014) 'The Australian Defence Force Academy "Skype sex scandal": lessons on leadership and ethics', lecture presented to the 8th Triennial Meeting of the Colleges and Universities of the Anglican Communion, Seoul.
- Rooke, D. (2016) 'Campus Assault', *Saturday Paper*, No. 125, 10–16 September, www.thesaturdaypaper.com.au/news/education/2016/09/10/campus-assaults/14734296003720
- Sheehy, E. (2017) 'Making Universities Safe for Women: Sexual Assault on Campus' in W. Antony, J. Antony and L. Samuelson (eds) *Power and Resistance: Critical Thinking About Canadian Social Issues*, sixth edition, Black Point, NS: Fernwood.
- Steinem, G. (2016) *My Life on the Road*, Random House: New York.
- Universities Australia (2016) *Respect. Now. Always*, www.universitiesaustralia.edu.au/uni-participation-quality/students/Student-safety#.WLLaCSN97aZ
- Universities Australia (2017) '10 Point Action Plan: An initial response from Australia's universities to the national student survey on sexual assault and sexual harassment', <https://www.universitiesaustralia.edu.au/uni-participation-quality/students/Student-safety/Respect-Now--Always-#.WoZiFCVua70>
- Wahlquist, C. (2017) 'Human Rights Commission defends survey on university sexual assaults', *Guardian*, 4 April, www.theguardian.com/australia-news/2017/apr/04/human-rights-commission-defends-survey-on-university-sexual-assaults
- Willis, L. (2013) 'ADFA Skype sex scandal: Daniel McDonald, Dylan Deblaquiere avoid jail time', ABC News, 23 October, www.abc.net.au/news/2013-10-23/sentence-expected-in-adf-skype-sex-case/5039296