A map of Australia with various colored dots (red, green, blue, yellow, black) placed across different regions, representing university sexual assault incidents. The dots are clustered in major urban centers like Sydney, Melbourne, Brisbane, Perth, and Adelaide, as well as in more remote areas like Darwin and Hobart. The map includes state and territory names, major cities, and geographical features like the Great Australian Bight and the Tasman Sea. A legend in the top left corner identifies the map as 'Mema AUSTRALIA' with a scale of 1:4,500,000.

Connecting the dots: Understanding sexual assault in university communities

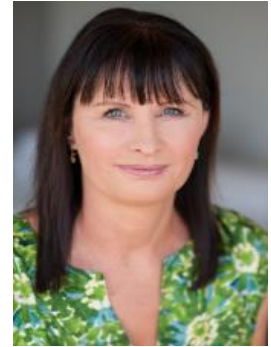
*A submission to the Australian Human Rights Commission's
'University Sexual Assault and Harassment' Project*

Prepared by End Rape on Campus Australia
January 2017

END RAPE ON CAMPUS AUSTRALIA
endrapeoncampusau.org

Foreword

Professor Catharine Lumby, Macquarie University and Board Member, Rape and Domestic Violence Services Australia



It is a chastening privilege to write this introduction to End Rape on Campus's comprehensive report on sexual harassment and assault in Australia's universities. It is a report that sets the benchmark for understanding and responding to the shameful levels of sexual assault and harassment on our campuses.

That a report of such breadth and depth was produced without funding by current and former university students is testament to what our universities are doing well: training students in rigorous research and advocacy skills. That such a report needs to be written at all speaks volumes about how comprehensively many of our universities are failing their students in a foundational area: the right to gain an education in a safe environment.

This report details the disproportionate and devastating impact of assault on students, who are overwhelmingly female. It's an impact that can last a lifetime. Students underperform, drop out of their studies, struggle to trust others again and are at risk of developing mental illness. Alarming, many universities are compounding this trauma by failing to support survivors and, in some cases, actively seeking to silence them.

Policies across our tertiary sector are inconsistent, often opaque, and not informed by best practice trauma response. This is in an era when Australia leads the world in post-assault trauma counselling and sexual assault prevention education.

Our universities spend millions of dollars promoting their commitment to excellent research and teaching. Yet, all of that means nothing if they do not fulfil their basic duty of care to prevent the assault and harassment of students and to support survivors.

Sexual assault prevention does not end with posters and awareness raising ribbons. As my colleague and international expert in the field Professor Moira Carmody notes, too many universities are not applying their own standards of academic rigour when it comes to effective prevention education.

The sector's response to assaults is equally too often legalistic and bureaucratic. Despite having a clear duty to provide a safe environment on campus for all students, many universities continue to see assault as purely a matter for the police.

This report is a hard report to read but it is essential reading for all of us who serve in the tertiary sector and care about the welfare and the future of our students. There are leaders in our universities who are committed to change and this report offers them clear recommendations on how to show leadership on this critical issue.

Too often, our universities have dealt with sexual assault and harassment of students by turning a blind eye, by claiming it is not their responsibility or, most shamefully, by actively covering up assaults. It is time to face the evidence and put a full stop to harassment and assault on campus.

**Professor Catharine Lumby
Macquarie University and Board Member, Rape and Domestic Violence Services Australia**

Acknowledgements

End Rape on Campus Australia would like to acknowledge and thank the contributions of its members who worked on this submission - in particular, Sharna Bremner, Ellie Greenwood, Anna Hush and Merri Knox.

We also thank journalist, author and sexual assault advocate, Nina Funnell, who provided substantial written input and expertise in producing this report.

We thank Professor Catharine Lumby for her ongoing support of the organisation's goals and for preparing the introductory remarks to the report.

We also thank our sister organisations that have provided guidance and advice to End Rape on Campus Australia in the course of our activities, particularly End Rape on Campus in the USA, Rape and Domestic Violence Services Australia and The Hunting Ground Australia Project.

Finally, we would like to thank each and every survivor that has worked with us. Without their generosity in sharing their stories and experiences with us, this submission would not be possible.

To every survivor out there - we hear you. We believe you. We support you. We stand with you.

End Rape on Campus Australia

Understanding sexual assault in university communities

A submission to the Australian Human Rights Commission 'University Sexual Assault and Harassment' Project

Executive summary

The following report is the result of End Rape on Campus Australia's extensive experience working with and advocating for student survivors of sexual assault. We believe that everyone has a right to an education free from sexual violence and that educational institutions have the responsibility of addressing sexual assault within their communities, both at the level of primary prevention, as well as through providing quality, trauma-informed services and pathways for reporting incidents of sexual assault.

In this submission, we provide an overview of the problem of sexual assault at tertiary educational institutions in Australia, including the nature and extent of the issue, the obstacles a survivor may face when reporting and accessing support, and the historical context of universities' failure to respond to this issue. We have made a number of recommendations for change both at individual universities, and at the level of State and Federal Governments, to address the ongoing problem of sexual assault in university communities.

The nature and extent of sexual assault within university communities

At present, there is little reliable data on sexual assault prevalence rates at Australian universities, however national statistics show that young women in general are at a significantly greater risk of experiencing sexual assault than any other group of people. Recent media cases and data obtained through FOI investigations indicate that sexual assault and harassment is occurring at concerning rates at Australian universities and colleges. Attitudes which minimise sexual assault, shift blame onto victims or normalise non-consensual activity create a climate in which sexual assault is both more likely to occur, and less likely to be recognised and reported.

We note that the perpetrators of sexual assault are overwhelmingly male, reflecting the gendered nature of sexual assault as a crime of power and control. In many instances, rape occurs off campus, in domestic settings such as share-houses, apartments, house parties, and so on. 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. In this section, we also outline the role of witnesses and responders to acts of sexual assault, including friends of the victim, tutors, Residential Advisors and student representatives. There is an overarching lack of training and support for these supporters, creating a real risk of vicarious trauma. We provide several de-identified case studies from our work, illustrating common responses to sexual assault in university communities.

The aftermath of rape: survivor needs in the wake of sexual assault

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

Sexual assault can cause not only psychological and medical issues, but also financial stress, difficulty with academic tasks, the need for legal support, and housing issues, amongst others. In many cases, universities fail to make the connection between these needs and a student's experience of sexual assault. Even where

universities do endeavour to provide for some of these needs - for example, by referring students to on-campus counselling services - these services are often inaccessible and not specialised for responding to trauma. In particular, survivors have faced difficulties accessing the support they need with academic tasks, such as extensions or special considerations for assignments, time off from lectures or class, and changes to timetabling arrangements. Strict requirements for particular documentation, or automated systems that frequently reject applications, can cause significant anxiety for survivors. On-campus counselling services pose another problem. These services are often understaffed or underfunded, and many lack counselling staff with trauma specialist training, leading to some survivors receiving improper, and at times dangerous, treatment.

Understanding the history and context of responses to sexual assault at Australian universities

Sexual assault is not a new issue at Australian universities - student activists have been urging universities to address sexual violence for many decades. However, little progress has been made in improving policies, services and structures for reporting sexual violence. The overarching problem with universities' collective failure to address sexual violence is the conceptualisation of the problem as primarily a private concern or a woman's responsibility. Incidents of sexual assault are treated as rare, disconnected and random, rather than the inevitable product of a social context with deep-rooted and persistent gender inequality. This attitude leads to university campaigns that perpetuate various rape myths - for example, the misleading 'stranger danger' narrative leads to suggestions that better lighting on campus would reduce sexual assault. In many cases, universities seem to believe an adequate response to the prevalence of sexual assault is to publish 'safety tips' that urge women to modify their behaviour to avoid being sexually assaulted and perpetuate the idea that women hold responsibility for their own safety. Notably, such strategies fail to make perpetrators accountable for sexual assault.

Universities also tend to conceptualise sexual assault as always, and only, a police matter. Many university websites urge survivors to report their experiences to police. Commonly, survivors are told that the university cannot take action unless the incident has been reported to police, or until a criminal conviction is secured. However, universities do in fact have disciplinary and misconduct procedures, which give university officials the power to investigate student misconduct, make findings, and deliver penalties. These procedures can provide important pathways of restitution for survivors, and can ideally deliver practical outcomes to support a survivor's welfare, such as removing the perpetrator from a class or from campus. Contrary to much university rhetoric, most university decision-making procedures are also supported by longstanding principles of administrative law, which acknowledge and regulate decision-making by non-judicial bodies and provide protections for both survivors and alleged perpetrators.

Barriers and challenges to reporting sexual assault within university communities

There are many reasons that survivors may not choose to disclose their assault, whether informally, to friends and family, or formally, to professional support services, to the police or to their university. Barriers to informal reporting include emotional barriers, such as the fear of not being believed, as well as social, cultural, linguistic and structural barriers. There are also many obstacles to formally reporting instances of sexual assault - for example, inaccessible or poorly publicised reporting systems or a lack of trust in institutional procedures.

We review a number of common structural issues with universities' reporting mechanisms, which are rarely trauma-informed or survivor-friendly. Some of the most significant problems EROC Australia has identified are:

- University's sexual assault policies are often difficult to locate, particularly for a person in trauma. It is common for details of relevant policies to be scattered around multiple documents, or for universities to have webpages dedicated to sexual assault that do not provide any information about university policies, or information about making formal complaints.
- Policies are frequently confusing, out-of-date, inconsistent or incomplete. Key problems include policies and procedures that use complicated, legalistic language; policies that do not provide the name and contact details for staff members designated to receive formal reports; and policies that do not use disciplinary action as part of responding to reports of sexual assault.
- Some policies contain time limits on reporting, which are inappropriate given research demonstrating that survivors of sexual assault frequently do not report assaults for significant periods of time due to trauma.
- Some policies encourage survivors to attempt to resolve the issue informally with the perpetrator, which is unsafe, not trauma-informed, and is likely to deter reporting.
- Complaint portals are frequently not survivor-friendly or trauma-informed. For example, complaint portals sometimes specifically discourage survivors from discussing their assault with friends and support people. Portals also frequently do not provide clear information about who will have access to the survivor's details and story; do not provide referrals to support services; and do not provide information about what is entailed in making a formal report.
- Some policies mandate police involvement, which is inappropriate given that many survivors do not want police involved. This is also a mechanism through which universities defer responsibility for taking action.
- Some policies mandate that security be contacted regarding reports of sexual assault, despite the fact that not all campus security staff are trained to respond to sexual assault.
- Policies at residential facilities are often not harmonised with university policies. It is EROC Australia's experience that university residences frequently deal with reports of sexual assault on an ad hoc basis, and often do not comply with university policy. This means that survivors have no certainty as to how their report will be managed, are often not afforded procedural fairness or appropriate confidentiality, and often have no ability to effectively advocate for themselves or exercise rights of appeal.
- Some staff members are untrained or do not understand university policies. This can result in survivors not being informed of their rights under university policy when they report sexual assault, being given incorrect information, or investigations being dealt with improperly.
- Communication with survivors during investigation processes is often inadequate and investigations can take excessively long periods of time, often leaving survivors in prolonged states of stress and leaving key safety issues unresolved for significant periods.
- There is frequently a lack of protection offered to survivors who make reports to their university, leading to survivors feeling unsafe on campus because they fear seeing the perpetrator on campus, in class or at university residences. It is common for universities to fail to provide safeguards against harassment survivors face from friends of a perpetrator or from the perpetrator themselves.
- It is common for universities not to inform the survivor of the outcome of a complaint. This is a breach of national standards for tertiary education providers, leaves survivors without a sense of resolution, and breaches their right to procedural fairness, including to access appeal processes.
- Reports of sexual assault often lead to inappropriate outcomes and/or lenient punishments. For example, FOI data revealed Australian universities had 'punished' perpetrators by variously: fining them \$55, assigning them eight hours of community service, requiring them to write an apology letter, and moving them to a different residential hall.

Key recommendations

Based on the evidence presented in our report, EROC Australia makes several recommendations for changes that are needed at the university level, and beyond.

EROC Australia recommends that individual universities:

- a. Implement evidence-based education campaigns about sexual assault for students and staff, and eliminate any messaging around sexual assault that blames victims or perpetuates rape myths;
- b. Provide training for staff and student leaders on responding to disclosures of sexual assault and harassment;
- c. Improve support services for survivors including: by providing trauma-informed counselling services, and delivering holistic support to student survivors through designated sexual assault support centres;
- d. Create and implement policies and procedures that are survivor-centric. EROC Australia has developed a comprehensive model for what survivor-centric policies and procedures would look like. This includes that policies must provide behavioural definitions of sexual assault, clear information about how a survivor can make a disclosure or report, and procedures by which perpetrators of sexual assault can be disciplined.
- e. Maintain effective records of disclosures and reports of sexual assault and harassment, and how those disclosures and reports were dealt with.
- f. Improve oversight of student residences, including by requiring university-owned residences to comply with university policies and procedures, and encouraging independent residences to do so.

EROC Australia also recommends that:

- a. The Australian government establish a federal complaints mechanism that allows survivors to make complaints about their universities that can then be investigated and sanctioned;
- b. Education about consent and sexual assault be implemented at the secondary education level;
- c. Ongoing funding is provided to sexual assault support services in the wider community; and
- d. Future research be conducted through follow up surveys and submission processes that measure levels of sexual assault and harassment at universities, and survivors' satisfaction with universities' responses to sexual assault and harassment.

“The first person I told asked me how much I had been drinking. The second person I told said that I would be ruining his life. The third person I told said it wasn’t a university issue. The fourth person I told asked me why I had waited so long to tell anyone.”

- Anonymous student survivor (2016)

Table of Contents

1. The nature and extent of sexual assault within university communities	1
(a) The extent of sexual assault within university communities	1
(b) The nature of rape culture within university communities	3
(c) The nature of sexual assaults occurring within university communities	6
(i) The perpetrators	6
(ii) Where the assaults take place	6
(iii) Perpetrator tactics	6
(iv) Survivor reactions and responses	7
(v) The role of witnesses, bystanders and first responders	8
(vi) Other sexual assault responders	9
2. Case studies of university responses to sexual assault and harassment	11
3. The aftermath of rape: survivor needs in the wake of sexual assault	15
(a) Safety and control	15
(b) Medical needs	15
(c) Disclosure and support needs	15
(d) Counselling needs	17
(e) Academic needs	17
(f) Financial needs	19
(g) Housing needs	19
(h) Legal needs	19
(i) Acknowledgement and restitution	20
4. Understanding the history and context of responses to sexual assault at Australian universities	21
(a) Conceptualising sexual assault as a private concern or a woman's responsibility	22
(b) Fundamental framing errors: conceptualising sexual assault exclusively as a police matter	29
(c) What power do universities have to discipline offenders?	31
(d) Learning from the past	32
5. Barriers and challenges when reporting sexual assault within university communities	34
(a) Barriers to reporting sexual assault within university communities	34
(i) Barriers to informal reporting	34
(ii) Barriers to formal reporting through official university channels	34
(b) Policies are difficult to locate, particularly for a person in trauma	35
(c) Policies may be confusing, out-of-date, inconsistent, or incomplete	36
(d) Policies contain time limits on reporting	37
(e) Policies encourage informal resolution with the perpetrator	38
(f) Complaint portals are not survivor friendly or trauma informed	39
(g) Some policies mandate police involvement	40
(h) Some policies mandate that security be contacted	40

(i) Policies at residential facilities are not harmonised with university policies	40
(j) Some staff members are untrained or do not understand university policies	41
(k) Inadequate communication with the survivor during the investigation process	42
(l) A lack of protection for survivors after making reports to the university	43
(m) Not informing the survivor of the outcome of the complaint	44
(n) Inappropriate outcomes and lenient punishments	44
(o) The cycle continues	45
6. Recommendations for changes at university level	46
(a) Implement evidence-based education campaigns	46
(b) Provide training for staff and student leaders on responding to disclosures of sexual assault and harassment	46
(c) Improve support services for survivors	47
(d) Create and implement policies and procedures that are survivor-centric	48
(e) Maintain effective records	52
(f) Improve oversight of student residences	53
7. Recommendations for other changes	54
(a) Establish a federal complaints mechanism	54
(b) Implement education about consent and sexual assault at a secondary education level	56
(c) Ensure ongoing funding to support services in the wider community	57
(d) Future research	57
8. Release of the Australian Human Rights Commission’s final report	59

1. The nature and extent of sexual assault within university communities

(a) *The extent of sexual assault within university communities*

EROC Australia is very concerned about the level of sexual assault occurring at Australian universities. The experience of sexual assault support services, our own experience, and emerging research in the field suggests that Australian university students are experiencing sexual assault at high levels, although there are still significant gaps in the research literature.

The Australian Bureau of Statistics currently estimates that 1 in 5 women in Australia, and 1 in 25 men have experienced sexually assault since the age of 15.¹ Importantly for assessing the extent of this issue at universities, the highest risk group for sexual assault victimisation is women aged 15-19, and women aged 18-34 are more than twice as likely to have experienced sexual assault within the last year, compared to adult women in general.² Perpetrators of sexual offences are also most likely to be men aged in their early twenties.³

As being of university age is a risk factor for both experiencing and perpetrating sexual assault, it might be anticipated that a significant amount of academic attention would have already been paid to understanding sexual assault among university populations in Australia. To date, however, little research has focussed specifically on sexual violence at Australian universities and there is scant reliable data concerning current prevalence rates in the Australian context. This gap in the literature is poorly accounted for, however there is some evidence that previous attempts to gather such data have been blocked or undermined amid reputational concerns from the institutions. For example, in 2014, a previous attempt by the Australian Human Rights Commission to research sexual violence at university colleges was quietly shelved after it was met with resistance from various institutions.⁴

Two notable exceptions to this literature gap include the 2016 University of Sydney *Creating A Safer Community for All* report and the 2011 and 2016 National Union of Students *Talk About It* reports. In the former study, 1926 students at the University of Sydney voluntarily participated in an opt-in survey concerning sexual harassment and safety. The results found that a quarter (24.7%) of surveyed students indicated that they had experienced some form of unacceptable behaviour, including sexual harassment or assault, over the period of their enrolment.⁵ In the 2016 NUS study, 1366 students participated in a 2015

¹ Australian Bureau of Statistics. (2013). *Personal Safety, Australia, 2012*. [online] Available at: www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4906.0Main+Features12012?OpenDocument [Accessed 4 Oct. 2016].

² Tarczon, C. and Wall, L. (2012). *The nature and extent of sexual assault and abuse in Australia*. Australian Centre for the Study of Sexual Assault Wrap. [online] Available at: aifs.gov.au/publications/nature-and-extent-sexual-assault-and-abuse-australia [Accessed 4 Oct. 2016].

³ Lievore, D. (2004). *Recidivism of sexual assault offenders: Rates, risk factors and treatment efficacy*, vol. 80, Australian Institute of Criminology. [online] Available at: www.aic.gov.au/media_library/archive/publications-2000s/recidivism-of-sexual-offenders-rates-risk%20factors-and%20treatment-efficacy.pdf [Accessed 1 Dec 2016]

⁴ Stanton, K. (2017). *Survey of sex assaults on university campuses shelved*. [online] The Sydney Morning Herald. Available at: www.smh.com.au/national/survey-of-sex-assaults-on-university-campuses-shelved-20141114-11na07.html [Accessed 25 Jul. 2016].

⁵ University of Sydney, (2016). *Creating a Safer Community for All: Sexual Harassment and Assault on Campus*. [online] Sydney, p.1. Available at: sydney.edu.au/dam/corporate/documents/campus-life/emergencies-and-personal-safety/safer-community-for-all-final-report.pdf [Accessed 16 May 2016].

survey, with 27% indicating that they had experienced sexual assault while enrolled at their institution.⁶ EROC Australia notes that the sample-size and methodology of both studies have been questioned, however in the absence of more rigorous research these studies provide a useful entry point into understanding sexual assault at universities in the Australian context.

As this body of knowledge begins to take shape, local police and media reports have also contributed to our understanding of this issue, as have our own experiences of working directly with survivors and their advocates. In 2016, for example, Channel 7's *Sunday Night* program conducted the largest ever Freedom of Information (FOI) investigation into reported rates of sexual assault and harassment at Australian Universities. All 39 universities were targeted by the FOI investigation but at the time of the program's airing in October 2016, only 27 universities had complied with the FOI request. The results showed that in the past five years, 575 official complaints of sexual harassment and assault had been made to those universities (145 reports related to specifically to rape). The 575 reports resulted in just 6 expulsions.⁷

A further FOI investigation targeting police records over the last five years found that 153 rapes and sexual assaults had been officially reported to police as having occurred at the street addresses of universities in New South Wales, Western Australia, the Australian Capital Territory and Victoria.⁸

In interpreting this data, it is important to note that very few survivors report their experiences of sexual assault to either police or their university. For example, the University of Sydney's *Creating a Safer Community for All Report* found that only 1 in every 72 survivors (or less than 1.4%) made a report to the university.⁹ Likewise, figures from the 2012 ABS Personal Safety Survey show that 4 out of every 5 female victims did not report their most recent experience of sexual assault to police.¹⁰ This suggests that those figures uncovered through the FOI investigation represent the very tip of the iceberg.

In understanding prevalence rates, EROC Australia also draws on our relationship with sexual assault services as well as on our own experience of working directly with survivors and their advocates. For example, in October 2016, EROC Australia received 28 new disclosures. Very few of those individuals who have contacted us had made formal complaints to either the police or their university at the time. Again, this suggests that internal university records grossly under-represent the true picture.

⁶ National Union of Students (2016) *Talk About It: NUS Women's Department 2015 Survey Report*, p.20. Available at: www.nus.org.au/_talk_about_it [Accessed 2 Feb. 2016].

⁷ Funnell, N. (2016). *Largest ever FOI request paints a dirty picture of sexual assault at Australian unis*. [online] news.com.au. Available at: www.news.com.au/lifestyle/real-life/news-life/largest-ever-foi-request-paints-a-dirty-picture-of-sexual-assault-at-australian-unis/news-story/798508bfcc3a6b2a684c5dcb9ed67fb3 [Accessed 7 Oct. 2016]. See also: Sunday Night (2016). *Less than 2% of sexual assaults led to expulsion, SN university FOI reveals*. [online] yahoo.com.au. Available at: <https://au.news.yahoo.com/sunday-night/features/a/32833222/less-than-2-of-sexual-assaults-led-to-expulsion-sn-university-foi-reveals/#page1> [Accessed 9 Oct. 2016]

⁸ Funnell, N. (2016). *Police reveal what 'secretive' universities didn't want you to know*. [online] news.com.au. Available at: www.news.com.au/lifestyle/real-life/news-life/police-reveal-what-the-secretive-universities-didnt-want-you-to-know/news-story/0dbef6b5d42ed402e39b47010e570f1c. [Accessed: 6 Dec. 2016].

⁹ University of Sydney, (2016). *Creating a Safer Community for All: Sexual Harassment and Assault on Campus*. [online] Sydney, p.6. Available at: sydney.edu.au/dam/corporate/documents/campus-life/emergencies-and-personal-safety/safer-community-for-all-final-report.pdf [Accessed 16 May 2016].

¹⁰ Australian Bureau of Statistics. (2013). *Personal Safety, Australia, 2012*. [online] Available at: www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/4906.0Main+Features12012?OpenDocument [Accessed 4 Oct. 2016].

(b) The nature of rape culture within university communities

EROC Australia understands that sexual assault and harassment are motivated by power and control, male entitlement, and patriarchal dominance. Sexual violence is both a cause and consequence of gender inequality, and is more likely to occur in societies where traditional gender roles (which normalise and sustain that gender inequality) are perpetuated and adhered to.¹¹ We note that sexual violence occurs on a continuum of behaviour ranging from sexist jokes and innuendos, through to sexual assault, and that the behaviours on this continuum are intrinsically linked.

EROC Australia believes that sexual assault and harassment are more likely to occur in contexts or institutions where misogynistic, sexist and coercive behaviour is normalised, minimised, overlooked or excused. Such attitudes or beliefs can contribute to, and legitimise sexual assault by creating permissive communities where the behaviour of perpetrators is tolerated (or even venerated), while survivors are blamed for the sexual violence they experience.

In the 1970s, the term 'rape culture' was coined by feminists in the United States to describe the phenomenon where communities normalise or minimise sexual violence while blaming victims.¹² As part of this work, feminists also identified numerous rape myths which can silence victims, delegitimise their experiences, and contribute to community confusion of what causes, and constitutes sexual violence.

For example, some common rape myths include:

- That most rape is committed by strangers;
- That rape is driven by uncontrollable lust;
- That men cannot control their own behaviour;
- That women invite sexual assault through their dress or conduct;
- That alcohol causes sexual violence;
- That rape always involves physical force and often results in physical injury;
- That it is not rape if the people involved have had consensual sex before;
- That sex workers cannot be sexually assaulted or are less traumatised by sexual assault;
- That men cannot be sexually assaulted; and
- That there is one standard or 'normal' way that victims behave post-assault.¹³

Existing data shows that such beliefs are still prevalent among young Australians, and the population in general. A 2014 poll of 17,500 people conducted by VicHealth found that around one in five people in Australia (18%) believe that a woman is "partly responsible" for being raped if she was intoxicated at the time of the assault and one in six support the notion that when women say 'no' to sex, they really mean

¹¹ Our Watch (2014) *Reporting on Sexual Violence* [online] Available at: https://www.ourwatch.org.au/MediaLibraries/OurWatch/Images/ourwatch_reporting_on_sexual_violence_aa_v1.pdf [Accessed 1 Aug. 2016].

¹² Women Against Violence Against Women (WAVAW) Rape Crisis Centre (n.d), *What is Rape Culture?* [online] Available at: www.wavaw.ca/what-is-rape-culture/ [Accessed 21 Dec. 2016].

¹³ Rape & Domestic Violence Services Australia (2015), *Myths and Facts* [online] Available at: www.rape-dvservices.org.au/Portals/0/Users/003/03/3/Factsheets%20and%20Brochures/Factsheet%20-%20Myths%20of%20sexual%20assault%20-%20PDF%20-%20June%202015.pdf [Accessed 1 Oct. 2016].

'yes'.¹⁴ Harris et al. also note that 44% disagree that women rarely make false rape claims.¹⁵ The VicHealth report also states that 40% of young Australians believe rape results from men not being able to control their need for sex.¹⁶ Research commissioned by *Our Watch* found that 25% of Australia's young people believe it is normal for boys to sexually pressure girls, that 37% of young people believe it is hard to respect drunk women, and 27% that it is hard to respect women who wear revealing clothing.¹⁷

These and other problematic attitudes also exist on university campuses. In recent years, significant media attention has been paid to misogynistic and chauvinistic attitudes, as well as attitudes which trivialise sexual assault on campus. While much of the media attention has focussed on elite college environments, EROC Australia is aware that such attitudes exist more broadly on campus. Some recent examples include:

- In 2009, students from the St Paul's College at the University of Sydney created a Facebook group called "Define statutory: pro-rape, anti-consent". One of the members of the Facebook group had reportedly already been accused of raping a female student from a neighbouring college earlier that year.¹⁸
- Also in 2009, graffiti was found in a residential college at the University of Sydney reading 'they can't say no with a cock in their mouth' and 'any hole is a goal', and university revues featured skits about Rohypnol being used to 'help a male student get laid'.¹⁹
- In 2013, residents at the University of Sydney's Wesley College distributed stubby holders bearing the words "It's not rape if it's my birthday".²⁰
- In 2015 students at a residential college at the University of Queensland surrounded a female student chanting "no means yes, yes means anal".²¹
- In April 2016, male students from UNSW were filmed chanting a college song which included the lyrics: 'I wish that all the ladies were little red foxes and if I were a hunter I'd shoot up in their boxes; I wish that all the ladies were buns in the oven, and if I was a baker I'd cream them by the

¹⁴ Harris, A, Honey, N, Webster, K, Diemer K & Politoff, V. (2015), *Young Australians' attitudes to violence against women: Findings from the 2013 National Community Attitudes towards Violence Against Women Survey for respondents 16–24 years*, p.42, Victorian Health Promotion Foundation [online] [vichealth.vic.gov.au](https://www.vichealth.vic.gov.au). Available at: <https://www.vichealth.vic.gov.au/media-and-resources/publications/2013-national-community-attitudes-towards-violence-against-women-survey> [Accessed 1 Oct. 2016].

¹⁵ Ibid.

¹⁶ Ibid., p.36.

¹⁷ TNS Social Research (2016) *The Line Campaign Evaluation: Wave 1 – Report: Summary of attitudes and behaviours of young people in relation to consent*, p. 3, Our Watch, Available at: <https://www.ourwatch.org.au/getmedia/fa1265e8-abfd-4ca3-ac3a-099bbb612910/The-Line-Evaluation-Research-on-consent-FINAL.pdf.aspx>

¹⁸ Pollard, R. (2009). Elite college students proud of 'pro-rape' Facebook page. *Sydney Morning Herald*. [online] Available at: www.smh.com.au/action/printArticle?id=844408 [Accessed 17 Nov. 2015].

¹⁹ Pollard, R. (2009). Harsh lessons at the university of hard knocks. *Sydney Morning Herald*. [online] Available at: www.smh.com.au/national/harsh-lessons-at-the-university-of-hard-knocks-20091108-i3kd.html [Accessed 17 Nov. 2015].

²⁰ Funnell, N. (2016) Women's officers write scathing letter to the University of Sydney. *News.com.au*. [online] Available at: www.news.com.au/lifestyle/real-life/news-life/womens-officers-write-scathing-letter-to-the-university-of-sydney/news-story/c502f85b53e21d46c57d8a1040a2a294 [Accessed 22 Aug. 2016].

²¹ Funnell, N. (2016) No means yes, yes means anal. *The Daily Telegraph*. [online] Available at: www.dailytelegraph.com.au/rendezview/no-means-yes-yes-means-anal/news-story/c06c8f0587745e45d9bd70502c62ae0c [Accessed 15 April 2016].

dozen; I wish that all the ladies were holes in the road, and if I was a dump truck, I'd fill them with my load.'²²

- In May 2016 students at Wesley College, University of Sydney were exposed for having published a 'Rackweb' in their annual journal, which 'slut-shamed' women for hooking up with men, and labelled female students 'bitches', 'hoes' and 'sluts', also giving awards for 'best ass', 'best cleavage' and 'biggest pornstar'.²³
- Also in 2016, media attention surrounded a Facebook page called 'Hotties of Melbourne Uni' that featured photos of female students who were rated on physical attractiveness, along with information about their study timetable and whereabouts on campus.²⁴
- In July 2016, students at John XXIII college, ANU, took non-consensual photos and videos of women's breasts and shared them online.²⁵
- Students at one residential college in the ACT have reported a practice called 'rockspidering' where, during Orientation week, male students at a residential college would knock on female student's bedroom door: if the female opened the door this was taken as 'consent' to have sex.²⁶
- At one university, an oval is colloquially referred to as 'Rape oval', and at other colleges, students refer to cask wine as 'slut juice'. Other college students have referred to living quarters as 'slut alley' or the 'slut closet'.
- We have also received reports of 'target boards' with photos of female residents taped to it. One such board was referred to as 'The Banging Target' and male residents participated in a competition style tournament to 'hit the bullseye' (hook up with the girl whose photo was at the centre of the board) and be named 'King of the College'.

While it is not within the scope of this submission to explore fully the cultural problems associated with some college residences attached to Australian universities, we note that this is an area that requires significant further research and attention. We also note that such attitudes at Australian universities are by no means limited to college residences and halls, but that media attention tends to focus on these communities at the expense of broader student experiences. This can mean that sexism within other communities and institutions on campus, for example sporting communities or male-dominated departments, can be overlooked.

Understanding the toxic elements of cultures both within residences and universities more broadly is significant as it is against this backdrop that survivors are both experiencing sexual assault, and are making the decision of whether to report or not. It is also against this backdrop that perpetrators are making sense of their own actions while also looking to their peers and others for tacit endorsement of their choices.

²² Palin, M. (2016) College scandal: Sydney male students' pro-rape chants caught on camera. *News.com.au*. [online] Available at: www.news.com.au/national/nsw-act/news/college-scandal-sydney-male-students-prorape-chants-caught-on-camera/news-story/77d25418300d6756d7c478fb73df2ba3 [Accessed 12 April 2016]

²³ Balakumar, A. (2016) Exclusive: Wesley College 'Rackweb' slut-shames female students, calls them 'bitches' and 'hoes'. *Pulp*, University of Sydney Union [online] Available at: www.usu.edu.au/News/EXCLUSIVE-Wesley-College-Rackweb-slut-shames-fem.aspx [Accessed 10 May 2016].

²⁴ Cook, H. (2016) Calls to remove 'creepy' Facebook page which ranks hot University of Melbourne students. *The Sydney Morning Herald*, [online] Available at: www.smh.com.au/action/printArticle?id=1007968673 [Accessed 13 April 2016].

²⁵ Funnell, N. (2016) ANU college students expelled over creepy Facebook page. *News.com.au* [online] Available at: www.news.com.au/lifestyle/real-life/news-life/canberra-college-students-expelled-over-creepy-facebook-page/news-story/f6a7e3e08860dcd22ccd542e4d6d74d1. [Accessed 20 July 2016].

²⁶ Mackintosh, E. (2011) Sexual assault, harassment plague female university students. *Crickey.com.au* [online] Available at: <https://www.crikey.com.au/2011/03/24/s-xual-assault-harassment-plague-female-university-students/> [Accessed 20 February 2016].

(c) The nature of sexual assaults occurring within university communities

While no two sexual assaults are ever the same, based on our experience of working with sexual assault survivors, we have identified a number of key trends regarding the nature of sexual assault within university communities.

(i) The perpetrators

The overwhelming majority of rape survivors who have contacted EROC Australia are female, and to date, all survivors who have contacted us state that the person or persons who assaulted them were male. In most cases the perpetrator/s was someone known to the victim, or a very recent acquaintance, such as someone they met through friends or at a party on the night the assault occurred. This accords with broader research mentioned earlier, conducted by the Australian Bureau of Statistics.

EROC Australia has also been contacted by numerous rape survivors who say that once they disclosed their rape, they learned that their rapist had assaulted or attempted to assault one, or several other, students. One woman who reported that she was raped by a senior student leader at her college residence says that he was known for having a 'taste for first year students'. After disclosing her assault to a friend, the survivor subsequently learned that the offender had assaulted at least two other students. In a second case, a survivor disclosed to a friend that she had been assaulted by a man at their college. On disclosing this, she learned that the same man had attempted to rape her friend on a prior occasion.

(ii) Where the assaults take place

Most rapes which have been reported by students to EROC Australia occurred *off campus*, often in a domestic setting such as a share-house or apartment, a friend's home, their own home, at a house party, lounge rooms, bedrooms, student villages etc. Off campus sexual assaults also took place in a range of other locations; cars, hotels, parks, cabins, etc.

While some universities restrict their attention to rapes which physically occur on campus, EROC Australia cautions against this approach and stresses that rapes which occur off campus often result from social connections that are created at universities. In such cases, it is artificial for universities to ignore their role in fostering the social relations in which sexual assault has occurred, regardless of its geographic location.

Similarly, in such situations, survivors frequently state that the assault then impacts their sense of safety on campus and their ability to attend class and complete their studies. It would be artificial for universities to claim that because the assault happened in an off-campus location it is not relevant to the student's university experience.

Of the assaults that did take place *on campus*, the majority occurred in residential facilities such as colleges and halls, with a smaller number occurring in other areas such as on campus bars or function venues, staff offices, ovals, gymnasiums, toilets, or shower stalls.

(iii) Perpetrator tactics

Survivors indicated that perpetrators had used a range of tactics before, during and after the assault to 'groom' them, by lowering their inhibitions, increasing their vulnerability and/or decreasing the likelihood that they would feel able to report the assault.

Prior to an assault occurring, survivors have reported that perpetrators:

- Used tactics to gain trust, as well as access. For example, one survivor reported that a perpetrator offered to let her wait in his dorm room, because she had been locked out of her own room. Once inside the room he raped her. Another student reported that a fellow college student offered to walk her back to her dorm 'for safety' late at night, before assaulting her;
- Used tactics to isolate their intended victims. Survivors have reported being separated from friends and taken into private rooms at parties. One survivor reported having her mobile phone removed by a perpetrator, in what initially appeared to be a 'game';
- Plied potential victims with alcohol to increase their vulnerability, or used drink spiking (by adding extra alcohol or drugs to another person's drink) to increase their level of intoxication without their consent; and,
- Targeted those they perceived as especially vulnerable, such as international students, students who worked as sex workers, students with disabilities or LGBTIQ students. These students are perceived as more vulnerable than others because they may be more socially isolated or because they may face additional barriers to reporting assaults.

During assaults survivors report that perpetrators use a range of additional tactics to seek compliance, or intimidate a person. For example:

- Using coercive tactics to 'normalise' what is occurring, or confuse the survivor into believing that what is happening is consensual. Some examples of comments said to survivors mid-assault and reported to EROC Australia include: "don't you know how horny you make me?", and "you like this, don't you?";
- Using threatening and intimidating language. Comments such as "no-one will believe you" and "shut up, don't tell anyone" have been reported by survivors. We note that in very few cases was extreme physical force or violence used during the assaults reported to us. In our experience, psychological restraints (such as threats or intimidation) and emotional manipulation are far more commonly used by perpetrators than physical force.

Following assaults, psychological manipulation by the perpetrator may continue. Perpetrators often use 'gaslighting' tactics²⁷ post-assault to rationalise the assault or reframe it as a consensual encounter to confuse survivors or deter them from reporting. Survivors have reported:

- Receiving text messages the next day from their perpetrator saying "I had such a great time last night" or "we should do that again some time"; and
- Receiving friend requests from their perpetrators on Facebook.

(iv) Survivor reactions and responses

Survivors have reported a diverse range of responses during their assaults. There is no 'normal' way for someone to respond to sexual assault and all responses are valid and legitimate.

During the assault, large numbers of sexual assault survivors report that they did do not 'fight back' or resist while being sexually assaulted. For some, a 'failure' to fight back produces feelings of shame, self-hatred, guilt, or inadequacy. Yet, research shows that sexual assault victims often freeze during an assault,

²⁷ Gaslighting' is a set of behaviours that seek to invalidate or call into question a survivor's experiences. Through these behaviours, perpetrators seek to plant seeds of doubt and confusion. Such tactics undermine a survivor's confidence levels, by invalidating their perceptions of what has occurred. This confusion then often deters survivors from reporting. Ultimately, this is yet another tactic used by perpetrators to manipulate and exercise control over their victim.

as a natural survival instinct.²⁸ The existence of the ‘freeze’ response is seldom included in education initiatives or broader discussions of sexual assault on campus.

Survivors also report a wide range of reactions *after* their assault, including:

- Fear of seeing the perpetrator, such as in class, on campus or at a residence. This may be compounded by fears that the perpetrator may re-offend, or that they may exact revenge if the survivor reports the assault.
- Many survivors experience a delayed recognition that what happened to them was sexual assault. It may take a survivor anywhere from days to many years to identify their experience as rape.
- Fear of not being believed.
- Fear of being blamed.
- Feelings of guilt, shame, embarrassment or self-blame.
- Shock, denial and disbelief.
- Memory gaps or recollections of the incident that don’t ‘add up’.
- Fear that everyone will find out.
- Fear of social ostracism, stigma, or community reprisals.
- Fear or distrust of authority figures: sexual assault is a crime of power, control and abuse of personal authority. This can create feelings of distrust towards authority figures in general.
- Fear of further structural discrimination: members of minority groups including members of the LGBTIQ community, people with disabilities, people from CALD backgrounds and sex-workers also face multiple additional barriers to reporting because of attitudes which structurally discriminate against them.

(v) The role of witnesses, bystanders and first responders

In many cases, there may be witnesses to an incident of sexual assault either before, during or after the incident occurs.

Before the incident occurs, there may be people around the perpetrator and the victim. These witnesses, often friends and acquaintances of the perpetrator or the victim (or both), may see grooming behaviour occurring, but may misread this behaviour as flirting or seduction.²⁹

While less common, EROC Australia is also aware of some instances where witnesses have interrupted a sexual assault *while it was occurring*. For example:

- A male student walked in on a rape in progress in a college dorm room. His sudden presence acted as a “circuit breaker” for the victim, who up until that point had felt paralysed, speechless and unable to fight; and
- A male student who heard a female student yelling for help and was able to intervene and stop the assault from continuing.

²⁸ Marson, K. (2014) *Jury convinced by expert evidence on ‘freeze fright’ response in rape victims*. *Sydney Morning Herald* [online] Available at: www.smh.com.au/comment/jury-convinced-by-expert-evidence-on-freeze-fright-response-in-rape-victims-20140406-zqrkd.html [Accessed 6 April 2014].

²⁹ Social norms play a large role in normalising coercive behaviour, such as the gradual violation of bodily autonomy, as ‘harmless fun’ or romantic attention. The perspectives of these witnesses can sometimes be useful for universities in gaining an understanding of the role of bystanders, including why bystanders often fail to act.

However, EROC Australia is also aware of cases where witnesses have ignored or dismissed assaults. In one incident, a group of male students overheard sexual noises coming from a bathroom, and began jeering, supposedly unaware that a female student was being raped by their male friend who had locked himself in the bathroom with her. These cases demonstrate that witnesses or bystanders can play a significant role in either preventing, interrupting or enabling assault.

Witnesses are often present *after a sexual assault occurs*. Because students often live in very close proximity to one another (in share-houses, dorms, etc.) it is not uncommon for witnesses to be involved in some stage of an assault. Despite this, EROC Australia has been informed that student witnesses are frequently discounted within university investigations as unreliable, particularly if they were drinking alcohol at or around the time of the assault. In a court of law, witnesses who were drinking can still give evidence, even though this evidence may later be found to be lacking reliability. The dismissal of such witnesses in university investigations creates an unfair evidentiary standard and places unnecessary constraints on the information available to investigators.

Finally, universities should recognise the impact of disclosure on students who respond to sexual assault, either in the immediate aftermath, or in the longer term. Since sexual assault survivors are more likely to disclose to a friend than anyone else, young people - and young women in particular - often find themselves in a supportive role. Indeed, because survivors gravitate towards close friends and those whom they perceive may be better able to relate to their experiences, they often elect to disclose to students over professionals, women over men. One study of 1241 undergraduates at the University of New Hampshire found that 1 in 3 women, and 1 in 5 men, had received a disclosure from a friend of an unwanted sexual experience. The study also found that women responded in a more positive way to their friend, but experienced greater personal distress because of these disclosures.³⁰

The result of this trend is that female university students often end up performing an informal counselling role, where they prop up - or substitute - official support services through their own unpaid emotional labour. This emotional labour is not without significant psychological cost for those young women: receiving disclosures of sexual assault is often highly distressing and can produce feelings of powerlessness, futility, despair, frustration, anger and sadness. In time, repeat exposure to traumatic content can also result in vicarious trauma.

(vi) Other sexual assault responders

EROC Australia has also spoken to several student representatives – such as Women’s Officers and Queer Officers – who often receive sexual assault disclosures as part of their role as elected student office-bearers.³¹ In such cases, the burden of doing unpaid or underpaid community work on sexual assault, receiving disclosures of sexual assault from students and managing their own mental health can be incredibly taxing. For example, EROC Australia is aware of a Women’s Officer at one university whose role including monitoring a 24/7 mobile hot-line for sexual assault survivors at her university. At peak times, she was receiving up to ten new rape disclosures per week and was expected to triage the complex needs of

³⁰ Banyard, V.L., Moynihan, M.M., Walsh, W.A., Cohn, E.S. and Ward, S., (2010). Friends of survivors the community impact of unwanted sexual experiences. *Journal of Interpersonal Violence*, 25(2), pp.242-256

³¹ Women’s Officers and Queer Officers represent the interests of women and members of the LGBTIQQ community on campus. The demands placed on students filling these leadership roles are often significant. In some cases, student representatives are paid small stipends by their student union or council (for example, University of Sydney Women’s Officers are paid \$12,000 per annum., UNSW Women’s Officers receive \$11,000 per annum and Flinders University Women’s Officers are paid \$3000 per annum), but at most universities, student representatives are not compensated for their labour.

those survivors while managing her own mental health, wellbeing, and university workload. It should also be noted that it is not uncommon that the students who fill these roles are themselves survivors of sexual assault.

However, the valuable contribution of these individuals to their university communities is frequently overlooked by university managements. Former Women's Officer at the University of Sydney, Anna Hush, describes "receiving constant disclosures of sexual assault throughout my term. I was trying to balance supporting survivors, managing my own vicarious trauma and assisting other advocates. I felt like I was burdened with picking up the slack from a system that was failing survivors of sexual assault. Having received no training or support from my university, this took its toll on my mental health." (personal communication, December 2016) Indeed, EROC Australia is aware of few cases in which these representatives were offered training funded directly by the university in managing vicarious trauma or responding with compassion to disclosures of sexual assault, and student representative organisations often lack the funds to provide professional training to their elected representatives.

Universities also overlook the impact of initiatives that are likely to result in a direct increase to the number of disclosures that student representatives are required to respond to. For example, some student representatives have reported to EROC Australia that they received an increased number of disclosures of sexual assault during the period in which the Australian Human Rights Commission's survey into sexual assault was being conducted on their campus. These student leaders state that this increased emotional burden was not recognised by university administrations as they promoted the survey, and several student representatives who found their disclosure workload increase say they were not adequately briefed by the university regarding the rollout of the survey at their university.

Other student leaders, tutors, mentors, and Residential Advisors at colleges, also frequently receive disclosures, but in many cases, they also lack adequate training, supervision and support to deal with the emotional distress of receiving disclosures. In some cases, it is written into college RA position descriptions that they are expected to triage the needs of rape survivors. This produces safety concerns for the RAs (who may themselves be survivors of sexual violence) who are at increased risk of developing vicarious trauma (VT). As VT is regarded as an occupational health and safety hazard, placing RAs directly in the line of receiving disclosures may leave colleges legally and financially liable, should an RA develop VT, which may be considered a workplace injury. This arrangement also produces considerable concerns regarding the quality of response that survivors are provided with, which will be explored in the following section of the submission.

2. Case studies of university responses to sexual assault and harassment

The following are real case studies of university responses to sexual assault and harassment. We are aware of these experiences through our work. All have occurred within the last five years and are related to universities in New South Wales, Queensland and South Australia. To protect the confidentiality of the survivors involved, we have de-identified each case study.

Case Study One:

A female international student was raped by a male international student at on-campus accommodation. The female student awoke to the male student raping her.

The female student was assisted by an external support person to report the assault to the manager of her on-campus accommodation. The manager responded by asking whether it was “possible” that the female student had “simply been mistaken” as she had “been drinking” and because the male student was of “Middle Eastern descent” it was likely that “cultural differences” had “just led to a misunderstanding” about what had occurred. The manager advised that no further action would be taken because there was no “evidence that she [the female student] hadn’t consented”.

At no time did the manager offer to assist the female student to make a police report, get a forensic medical exam or medical assistance, or seek out counselling services. No information was provided to the student about university sexual assault or harassment policies and/or complaints or misconduct procedures.

Due to the manager’s response, the student decided against filing any further complaints – either to police or to other staff at the university.

Case Study Two:

A female international student was indecently assaulted by a male domestic student who was known to her at a party at a residential college.

The student reported the assault to both the head of the residential college she lived at, and the head of the residential college where the assault took place. The male student admitted to the assault and was immediately removed from the residential college, but was allowed to transfer to another residential college at the university.

The student also reported the assault to staff at the university, however no further action was taken by the university. The student was not provided with any information about university sexual assault or harassment policies and/or complaints or misconduct procedures.

Case Study Three:

A female international student was raped at the student accommodation where she lived, by a male domestic student who was known to her. The perpetrator was a friend of another resident of the student accommodation. The rape was reported to staff at the student accommodation and the university where both the victim and perpetrator were enrolled as students.

The management of the student accommodation placed a permanent ban on the perpetrator. However, university staff advised that no action could be taken on their behalf unless a police report was made. As the female student was returning to her home country less than a month later, she declined to report her assault to the police. University staff offered to assist the female student to arrange for on-campus counselling appointments, however she was too afraid to attend campus due to the risk of encountering the perpetrator. The student was not provided with any information regarding university sexual assault or harassment policies and/or complaints or misconduct procedures at any time. The university did not offer any assistance to the student to report the matter to the police or to seek medical attention. The student's fears meant that she did not feel safe attending the final weeks of classes or sitting her exams and she applied for special consideration to undertake her exams once she had returned to her home country. This was granted and the student returned home a week after she had been assaulted.

Case Study Four:

A male international student was sexually assaulted by a male domestic student at an off-campus party. Both students were enrolled in at least one course together, meaning that the victim would encounter the perpetrator at least once a week in lectures, and once or twice a week in smaller tutorial classes. The victim reported the assault to the university and requested that the perpetrator be moved to a different tutorial class. The victim was informed by university staff that they were unable to take any action until a police report was made. The victim attended the nearest police station, without any assistance from the university, and made a report. He advised the university that he had reported his assault to the police but was then informed that the university was now unable to take any action because the police were involved.

The victim was not provided with any information regarding counselling or other support services by the university at this time and was forced to find a sexual assault counsellor on his own, despite being an international student with little knowledge of the local area and available services. The victim was, however, provided with a "personal safety plan" by university and security staff. The plan advised the victim to "avoid contact" with the perpetrator and advised him that if he sighted the perpetrator on campus, the victim should "stop and select a different pathway to one which would continue any opportunity for contact". The victim became too fearful to attend his classes, especially the one in which the perpetrator would be present, so he again attended the police station and obtained an Apprehended Violence Order that would prevent the perpetrator from being in the same tutorial as him.

Approximately one month after his assault, the victim sought assistance from End Rape on Campus Australia. It was only then that he became aware of the university's student code of conduct, sexual harassment and assault policies, and the formal complaints processes available to him. By this time, the victim had disclosed the details of his assault to no less than ten different university staff

members, including staff in the university legal department. At no point was he offered assistance or any advice regarding his rights. The victim filed an official complaint against the perpetrator, using the university student code of conduct and harassment policy as a guide. He did not receive a response for over five weeks, at which time he was informed that he could not be told of the outcome of the complaint. As the victim's semester in Australia was almost over, and he was due to return home in a matter of weeks, he declined to pursue the matter any further.

Case Study Five:

A number of students experience various acts of 'hazing' by domestic students at a residential college at their university, including bullying, racist slurs directed at residents of colour, sexist slurs directed at female residents, and homophobic slurs directed towards residents who identified as LGBTQI. Residents engaged in drinking games on a regular basis and during one such game, a female international student said she had engaged in consensual anal sex with a previous partner. As part of the 'game' and due to her admission, she was forced onto all fours while one male resident stood on her hands, another on her feet, and one sat on her back. She was surrounded by additional male residents who began chanting "no means yes and yes means anal".

The incidents were reported to staff at the residential college as well as to staff at the university. The female student was enrolled in the same class as at least two of the perpetrators. The head of the residential college attempted to expel or suspend approximately 20 residents who were identified by their peers as perpetrators, but later advised that his decision had been overturned by the board of the college.

Staff at the university advised that they were unable to take any action as the incidents had occurred on college grounds, not university grounds.

The female student who experienced this incident dropped out of the class she had been enrolled in with the perpetrators. Another female student who had been targeted during the 'game' stayed in her bedroom with the door locked as often as she could to avoid any areas – both on university and college grounds – where she might have contact with the perpetrators. As a result, she was absent from several her classes for the remainder of the semester.

At no time did university staff offer to assist the affected students to make a police report or to obtain assistance from counsellors. The students were not provided with any information regarding university sexual assault or harassment policies and/or complaints or misconduct procedures.

Case Study Six:

A female international student was sexually assaulted by a male domestic student at a university party. She reported the matter to campus security but was told that "it was her word against his" and that there "probably wasn't much point" pursuing the matter further as there "wasn't any CCTV footage" of the incident. She was not provided with any additional information about filing a report or contacting the police.

The student made an additional report to another university staff member several weeks later as she was having difficulties concentrating on her class work due to trauma-related symptoms. She was referred to the university disability services to get assistance with gaining extensions on her assessments but was not provided with any additional information or referrals to counselling or other support services.

At no point was the student provided with any information regarding university sexual assault or harassment policies and/or complaints or misconduct procedures.

Case Study Seven:

A female domestic student from a rural area was sexually assaulted off-campus, while she was living at a residential college.

Experiencing difficulty in attending class and completing university work after this incident, the student absent-failed a number of units. The university demanded that she show cause in the form of a letter and provide evidence that she should be allowed to re-enrol in her course, or face automatic expulsion from her course. After writing a letter to the university explaining that she was experiencing mental health problems after being sexually assaulted, an experience that was, in itself, extremely re-traumatising, she was enrolled again but forced to undertake a reduced study load.

The next semester, while undergoing exposure therapy for symptoms of Post-Traumatic Stress Disorder, the re-emergence of many of these symptoms became overwhelming. The student absent-failed many units and once again received an automated request from the university to provide reasons for why she should remain enrolled with the threat of expulsion, even though university administration had details of her sexual assault and mental health condition on file. At the time this request was made, the student was travelling overseas, and was given a deadline of less than three weeks to show cause for failing units. She was automatically expelled from her course and was informed that she would not be able to return to studying for two years. After a lengthy appeal process that the survivor describes as “extremely anxiety inducing”, she was eventually allowed to resume her studies.

At no time was the student offered assistance in reporting her assault to police, provided with details of the university’s sexual assault, harassment or misconduct policies or information about how to make a formal report of the incident to the university.

3. The aftermath of rape: survivor needs in the wake of sexual assault

Students who have recently experienced sexual assault will often have a range of complex needs. However, the process of experiencing a traumatic event may also make it more difficult for a person to identify or prioritise their needs, or act in ways conducive to having those needs met. This process can be made more difficult when obstacles exist or when requests for support are denied. When universities do not understand, or anticipate the needs of survivors, such barriers and impediments are more likely to occur. By contrast, when institutions better understand the needs of survivors as well as the types of barriers they face, they are better positioned to support those survivors towards recovery.

(a) Safety and control

In the direct aftermath of a sexual assault it is essential to ensure the immediate physical and emotional safety of the survivor. However, this is often a delicate process that requires significant expertise. Because sexual assault robs an individual of power and control, any actions which further strip a person of control or autonomy may exacerbate feelings of powerlessness. For example, forcing a person to report to police or university security may seem well-intentioned, but in many cases this can re-traumatise a person by increasing feelings of powerlessness and lack of control.

(b) Medical needs

In the period immediately following a sexual assault, some survivors may have a need for medical and/or forensic services. Forensic evidence is particularly time sensitive and ideally must be collected and stored within 72 hours of the incident. However, responses such as shock, disbelief and denial are common in the wake of sexual assault and survivors may not realise their need for such services, or may not feel ready or able to access these services.

International students who do not have an understanding of the local healthcare system or who do not speak fluent English face additional barriers. There may also be cultural reasons as to why they do not want to disclose sexual assault to a medical service, or they may fear their parents/families at home finding out. In some cases, international students who do not have Medicare coverage may fear that services such as forensics and sexual health clinics would be prohibitively expensive. In Australia, anyone who has been subjected to a violent crime such as rape is supposedly entitled to all associated medical and forensic procedures, regardless of whether they hold a Medicare card. However, EROC Australia is aware that international students who have experienced rape have sometimes been wrongfully turned away from Emergency Rooms because they did not have Medicare cards.

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

(c) Disclosure and support needs

Research shows that the most important factor in determining a survivor's capacity to recover is the attitudes they encounter when they first disclose their assault.³² When a survivor's first disclosure is met

³² See Davis, RC., Brickman, E. and Baker, T. (1991) Supportive and unsupportive responses of others to rape victims: effects on concurrent victim adjustment. *American Journal of Community Psychology*, 19(3): 443-451; Ullman, SE. (1996) Correlates and Consequences of Adult Sexual Assault Disclosure. *Journal of Interpersonal Violence*, 11(4): 554-571; and Campbell, R., Sefl, T., Barnes, HE., Ahrens, CE., Wasco, SM., Zaragoza-Diesfeld, Y. (1999) Community services

with denial, doubt, blame, minimisation, or scepticism, they are less likely to make another disclosure in the future. This process is often referred to as 'secondary victimisation', and can have severe negative impacts on the survivor's healing process.³³

In our experience university students often disclose to individuals who may have no training, or limited formal training, in how to respond to sexual assault. This creates a risk both for the survivor and for the untrained person who may also feel overwhelmed, powerless and distressed. In several cases, tutors have received disclosures that they felt unable to manage or respond to. Students often disclose to tutors over lecturers - tutors are often perceived as more accessible as they tend to be closer in age, and students spend more face-to-face hours with them. Yet tutors are rarely, if ever, offered training or vicarious trauma support.

Numerous student-survivors have reported unsupportive or unhelpful responses on disclosure, such as being asked "are you sure?", "what were you wearing?", and "how can you remember if you were that drunk?". When students have reported rape to their heads of college, they are not always told that a separate reporting system exists for the university, and in some cases, they have been deterred from further reporting. Upon reporting her rape to her head of college, a student at Melbourne University was told that talking about the matter around the college could "hurt her case".³⁴ She was also told by peers that using the word 'rape' was "too strong" and "too inflammatory", and that involving the police was "a bit extreme".³⁵

Other survivors report similar experiences, including being told by university officials that they should not have told any friends about their rape as this "violates the privacy" of the offender. In one case a female student reported to her head of college that she had been raped by a senior student. The head of college expressed the belief that it's "not possible" for a man to hold a woman down with just one arm, and rape her.

In yet another case, a survivor reported her rape to the university, including that she had been intoxicated at the time of the rape. Because there had been a time delay between the assault and her decision to report, her veracity was called into question, and she was subsequently offered "alcohol counselling", rather than sexual assault counselling.

In other cases still, university staff have provided support for offenders. For example, University of Adelaide student Scott Belcher admitted to raping a female student in 2014. Belcher pleaded guilty to the assault and was sentenced to three years and seven months' jail time. Yet, at sentencing it was revealed that a faculty member from the University, Virginie Masson, had written the rapist a character reference in a bid to secure a lighter sentence. The judge set a minimum non-parole period of just 12 months.³⁶

for rape survivors: enhancing psychological well-being or increasing trauma? *Journal of Consulting and Clinical Psychiatry*, 67(6): 847-858.

³³ Williams, J.E. (1984) Secondary victimization - confronting public attitudes about rape. *Victimology*, 9(1): 66-81.

³⁴ Funnell, N. (2016) *Shocking sexual assault statistics revealed as more victims come forward to news.com.au*. [Online] news.com.au. Available at: www.news.com.au/lifestyle/real-life/news-life/shocking-sexual-assault-statistics-revealed-as-more-victims-come-forward-to-newscomau/news-story/7430ae1f269d97cc020fdc92b312abf9. [Accessed 6 July 2016]

³⁵ Ibid.

³⁶ Funnell, N. (2016) *The shocking way sexual violence is handled at Australian universities*. [online] news.com.au. Available at: www.news.com.au/lifestyle/real-life/news-life/the-shocking-way-sexual-violence-is-handled-at-australian-universities/news-story/fdb2f5d827ee8f6f4c124af11847aa25 [Accessed 29 June 2016]

Survivors who have felt ‘institutional betrayal’ have described such experiences as “a second rape”. By contrast, a positive response to a disclosure can significantly assist a person towards recovery. Positive responses are characterised by reassurance that the survivor is believed, that what happened to them was not their fault, and that they are not alone.

(d) Counselling needs

Following an assault, survivors might experience a range of psychological impacts including Post-Traumatic Stress Disorder (PTSD), depression and anxiety.³⁷ Due to the serious nature of these impacts, many survivors require access to counselling services following an assault. However, students who require counselling often face a range of obstacles.

Some students are not aware that counselling services are available on their campus. These services are often understaffed or underfunded, making it difficult for students to secure appointments. In some cases, students face wait times of over a month. In other cases, students are allotted a limited number of counselling sessions, so even when they do build a relationship with a counsellor, they cannot continue to receive counselling after their assigned numbers of sessions are over.

Equally troubling, many university counselling staff have not received trauma specialisation training, and a number of survivors report that they have received inappropriate responses from counselling. For example, in one instance a rape survivor who recently visited her university counselling centre was asked during a session to “close [her] eyes and picture what happened”. In another instance a second survivor who was crossing her arms during counselling sessions was asked to “do homework” which required her to “sit with her arms by either side of her torso” and reflect on her defensive body language and “sit with the feeling of being uncomfortable”. She reported that this deterred her from visiting the counselling centre, as it was not empowering, did not increase her feelings of safety, and did not address her sexual assault or any of the underlying reasons for her trauma and lack of feelings of safety.

Further issues arise when separate counselling services are offered to domestic and international students. International student support services may specialise in issues such as homesickness or culture shock, but are not necessarily equipped to respond to international students who have experienced sexual assault. A lack of culturally and linguistically diverse (CALD) services, or services that are not appropriate to the needs of LGBTIQ students, also increase these difficulties for CALD or LGBTIQ students.

(e) Academic Needs

The trauma resulting from incidents of sexual assault can make studying, working to deadlines and completing academic tasks much more difficult, leading some survivors to fall behind or discontinue their studies. Trauma can negatively impact on a student’s education in a range of ways including:

- Their capacity to concentrate or learn;
- Their desire to study or attend class;
- Their engagement with subject material and participation with other students in class;

³⁷ Rape and Domestic Violence Services Australia (2016) *Factsheet: Common Impacts of Sexual Assault*. [online] Available at: www.rapedvservices.org.au/Portals/0/Users/003/03/3/Factsheets%20and%20Brochures/Factsheet%20-%20Common%20impact%20of%20sexual%20assault%20-%20PDF%20-%20June%202015.pdf [Accessed 7 Oct. 2016].
Boyd, C. (2011) *The impacts of sexual assault on women*. [online] Australian Institute of Family Studies. Available at: <https://aifs.gov.au/publications/impacts-sexual-assault-women> [Accessed 10 Oct. 2016]

- Their ability to carry a full subject load;
- Their ability to meet deadlines;
- Their overall academic performance and grades;
- Their sense of safety on campus;
- Their sense of safety travelling to and from campus, or places where they might be expected to study (such as libraries);
- Their enjoyment of, and participation in university life more generally, and their overall sense of fulfilment at university; and
- Their decision to remain enrolled.

If the perpetrator of the assault is a fellow student or staff member, the fear of seeing them on campus or in class will often exacerbate these issues.

Survivors might require assistance in the form of:

- Extensions on their academic assignments;
- Special considerations regarding marking;
- Time off from lectures or classes;
- Changes to timetabling arrangements (particularly if they share classes with the perpetrator);
- Alterations to their enrolment (for example, dropping or deferring study or going part time);
- Exam considerations (including completing substitute home exams); and
- Special allowances for international students who wish to return home early.

However, survivors report that it can be both difficult and distressing trying to obtain extensions, special considerations or other forms of academic assistance. 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.

In other cases, students are only able to apply for extensions through a centralised system, where they do not know who will have access to their information. At the University of Sydney, for example, recent changes to the special considerations process have meant that applications are now handled through an automated, centralised system that lacks any human point of contact. The system requires extensive documented evidence from professionals, and often rejects applications outright.³⁸

At other universities, students who need to apply for multiple extensions across multiple subjects may need to continually repeat their story to many different people.

Finally, EROC Australia wishes to flag that some students suffer from significant distress on seeing that their final academic transcript as this document can be a stark reminder of a survivor's academic decline post assault. As one survivor framed it, "I went from receiving all high distinctions and distinctions to passes, incompletes and fails. Looking at my transcript you can see when my rape happened right there on paper. But how do you explain a transcript like this to future employers?" This survivor also states that her transcript significantly impacted her self-esteem, self-worth and self-perception. "I used to see myself as an achiever, as very academic, bright and a hard worker. But looking at my transcript, it's hard to imagine that

³⁸ Hall, M and Zhou, N. (2016) *'Inhumane': new special consideration system rejects students suffering cancer and bereavement*. [online] Honi Soit. Available at: honisoit.com/2016/07/inhumane-new-special-consideration-system-rejects-students-suffering-cancer-and-bereavement [Accessed 10 Dec. 2016]

anyone else will still see me that way. It's affected *my* ability to still see myself in that way" (personal communication, October 2016).

(f) Financial needs

There is a general lack of recognition that sexual assault can lead to financial difficulties for survivors. Sexual assault can be highly disruptive to a person's life (including to their employment and living arrangements) and many survivors report feeling "unable to cope or function as normal". Those who are suffering from trauma may need to take time off work, or may find it difficult to hold down jobs. As many students are involved in part-time employment, this is a significant consideration. Similarly, complications associated with PTSD can also exacerbate employment problems.

Some universities provide financial support services, but very few survivors are aware that these services exist. In some cases, financial assistance is tied to academic performance, which is paradoxical for survivors whose studies may be adversely impacted by trauma, making these services inaccessible. Trauma can also make it difficult for survivors to fill out complicated paperwork to apply for financial loans or benefits.

Survivors may also incur costs in the wake of a sexual assault. In some cases, they are required to pay for counselling or medical costs. They may also need to substantially re-arrange aspects of their lives, for example moving house due to feeling unsafe in their living space. Survivors may also incur additional HECS debt from having to repeat failed subjects or subjects which they have dropped out of. While some students are able to have HECS fees waived if they can provide sufficient documentation accounting for their course failure, not all students are aware of this.

(g) Housing needs

As mentioned above, students may require adjustments to their housing or living arrangements following an assault. For example, if a student no longer feels safe in their suburb, their home or living with the people they reside with, they may elect to move. Likewise, if a student is having difficulty paying rent because of financial stress, they may be evicted or forced to move home with family.

In cases where a student is assaulted in a residential college setting, it is not uncommon for them to initially repress what has happened and try to continue living in the same venue, before eventually deciding that such an arrangement is not feasible. In some cases, the perpetrator may still be on campus or living in the same facility. In other cases, the memory of the assault (if it occurred in the college) and other daily reminders may make it incredibly difficult to remain living at college, even if the perpetrator is no longer on campus. Similarly, comments or backlash from other students may make it impossible to remain at college.

(h) Legal needs

Student survivors may also have legal needs following an assault. A number of universities provide legal services although these too, are often stretched. For example, in 2016, Sydney University student newspaper *Honi Soit* published an article noting that "student demand for legal help [is reaching] 'saturation'", and that the legal team employed by the Student Representative Council had called on university management to fund a full-time discrimination lawyer to assist with the "surge" of harassment and assault cases.³⁹

³⁹ Joyner, T. (2016) *SRC lawyers call on University to fund dedicated sexual assault solicitor as demand surges*. [Online] *Honi Soit*. Available at: honisoit.com/2016/07/src-calls-on-university-to-fund-dedicated-sexual-assault-solicitor-as-demand-hits-saturation/ [Accessed 10 Dec. 2016]

(i) Acknowledgement and restitution

Finally, one of the most significant needs of a survivor is their need for acknowledgement of what has occurred and/or some form of restitution. Often the court process is held up as the primary vehicle through which victims can obtain acknowledgement of wrongs they have endured. Despite this, universities' processes for making reports or complaints of sexual assault can provide another important avenue for this need to be met. As explained below in Section 4(c), universities do have the power to investigate reported incidents of sexual assault, make findings and discipline perpetrators. For survivors who do not wish to engage in the criminal justice system, or who wish to instigate university-led investigations in addition to the court process, these findings and disciplinary procedures can provide a highly significant acknowledgement of their experiences, and of the wrongness of sexual assault. For some survivors, this avenue is the most relevant way to reach the kind of restitution they seek - for example, having the perpetrator removed from their classes or from campus.

4. Understanding the history and context of response to sexual assault at Australian universities

EROC Australia notes that rape and sexual assault are not new problems at Australian universities. News reports demonstrate that student activists have been urging university administrators to address the high levels of sexual violence faced by women in university communities since at least the early 1970s. Despite this, little has changed over the past four decades. In 2017, university students find themselves facing the same inadequate responses to sexual violence within universities and calling for the same improvements as students in the past. For example:

- In 1973, the Australian National University student newspaper, *Woroni*, requested that university women share their stories of sexual assaults on or near campus so that activists could “press for greater security measures on campus.”⁴⁰
- In 1979, the University of Adelaide’s student newspaper, *On Dit*, reported that “rapes have occurred on many campuses across the country and also in student colleges and halls of residences.”⁴¹
- In 1985, the University of New South Wales student newspaper, *Tharunka*, noted that a “special squad” had been formed to offer escorts to female students on campus and requested that students who had experienced sexual assault and/or harassment share their stories “to illustrate the need for more security on campus.”⁴²
- In 1993, the *Sydney Morning Herald* reported that female students had been targeted by repeated misogynistic behaviour and sexual harassment by male college residents at the University of Sydney. The harassment had become so extreme that the Women’s College had hired male postgraduate students to “act as security guards”. The former head of the Women’s Research Unit at the university noted that the university had done little to address widespread sexism: “the ranks close when sexual harassment comes up – universities are disinclined to act because they see it as normal, as too hard to deal with.”⁴³
- In 2006, the *Townsville Bulletin*, reported that two students had been sexually assaulted at James Cook University within a two-week period in October, while another student had been pushed from her bike and raped on campus, in broad daylight, in April that year. A student quoted in the article stated: “I’m sick of coming to uni and being scared. I’m sick of hearing every few weeks that another poor girl has been assaulted and had her life changed forever... I’m sick of never hearing the university take responsibility or action for something that is in their power to help fix... They sweep it under the carpet because it is bad PR”.⁴⁴
- In 2016, the Women’s Officer from Sydney University – along with 12 of her predecessors – wrote an open letter to the Vice Chancellor, Michael Spence, noting that: “for well over a decade, the university has been aware of the issue of sexual assault on campus. For over 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

⁴⁰ Woroni, (1973). Help! [online] p.6. Available at: trove.nla.gov.au/newspaper/article/140092857 [Accessed 2 Feb. 2016].

⁴¹ Bluff, K. (1979). At University: Women students do still face special problems on Campus. *On Dit*, [online] (21), p.8. Available at: hdl.handle.net/2440/42415 [Accessed 3 Feb. 2016].

⁴² Jost, R. (1985). Staying Safe on Campus at Night. *Tharunka*, [online] p.12. Available at: <https://www.recordkeeping.unsw.edu.au/documents/S394-May1985.pdf> [Accessed 3 Feb. 2016].

⁴³ Williams, G. (1993). Campus Battlelines. *Sydney Morning Herald*. [online] Available at: www.canberratimes.com.au/zoom/archive/rnews930220_0099_7451 [Accessed 8 Jul. 2016].

⁴⁴ Johnston, J. (2006). Campus of fear. *Townsville Bulletin*. [online] Available at: web.b.ebscohost.com.proxy.library.adelaide.edu.au [Accessed 17 Nov. 2015].

as the media cycle moves on, and damage control measures are implemented, the issue is once again put to the bottom of the agenda."⁴⁵

EROC Australia acknowledges that these examples represent a small sample of available reports and believes that past and present university responses to rape and sexual assault have been deflective and/or reactive, rather than proactive. Many of the responses, such as promises to increase lighting around campus or offering free self-defence classes, draw on myths about sexual assault and rape (such as that most rape is committed by strangers in dark side alleys) while failing to address the perpetrators of violence at all.

Dr Michael Salter, a senior lecturer in criminology at Western Sydney University, says that Australian universities are significantly lagging those in other Western nations in terms of their overall approach to sexual assault:

"[Australian] universities really haven't taken on board their responsibilities around prevention of sexual violence and victimisation within their own community. They have been quite slow to take that up compared to say, the United States, where since at least the late 1980s there has been an expectation that the university will take quite active steps to prevent sexual assault. Australian universities just haven't had that proactive response and because there is no collective ownership of that mandate within higher education, when victimisation takes place, the university is really on the back-foot.

Responses [to disclosure] tend to be ad hoc and highly legalistic. [But] a bureaucratic response is the exact opposite of what a person in that positions needs. A feeling of institutional betrayal significantly increases the likelihood that a student will develop long term traumatic mental health issues. It's a key opportunity to provide support and care and if that opportunity is missed, it directly causes harm to students. [...]

When that background community of care is absent, which is the case at the moment [at most Australian universities], then unis are defaulting to this very legalistic, bureaucratic view. Until prevention of violence and awareness around sexual assault is just embedded as part of a general university culture, the response [will continue to be] highly individualistic and reactive and the onus [will continue to] fall on victims to [advocate for themselves], rather than being able to relax back into an environment where they feel confident that they are believed. I think it would be in everyone's benefit to take this on to improve student safety, improve student wellbeing, and increase the educational opportunity and achievement for students impacted by sexual violence."⁴⁶

(a) Conceptualising sexual assault as a private concern or a woman's responsibility

Universities have also tended to conceptualise sexual assault as a private concern, and they have often approached each assault as an atomized, individual incident, rather than seen it as part of a wider trend which exists across culture. Such a framing has allowed universities to view sexual assault incidents as rare, disconnected, and random, which in turn has legitimised several problematic interventions. Sexual assault

⁴⁵ Hush, A. (2016). Sexual assault on campus is systemic. But Sydney uni has failed to act for decades. *The Guardian*. [online] Available at: https://www.theguardian.com/commentisfree/2016/aug/23/sexual-assault-on-campus-is-systemic-but-sydney-uni-has-failed-to-act-for-decades?CMP=soc_567 [Accessed 23 Aug. 2016].

⁴⁶ Funnell, N. (2016) *The shocking way sexual violence is handled at Australian universities*. [online] news.com.au. Available at: www.news.com.au/lifestyle/real-life/news-life/the-shocking-way-sexual-violence-is-handled-at-australian-universities/news-story/fdb2f5d827ee8f6f4c124af11847aa25 [Accessed 29 June 2016]

prevention approaches at universities almost always target women, and focus on women safeguarding themselves against random acts of violence.

For example, when a student or advocate enquires about sexual assault reporting or support information, universities often refer them to their own 'sexual assault prevention' webpages. Most of these do not contain information about preventing, reporting or getting support after sexual assault, or the wider issues surrounding sexual assault, but instead offer 'safety tips' to students. Many of these 'tips' imply that female students place themselves at risk and can actively avoid being sexually assaulted by changing their own behaviour. The 'tips' often employ 'stranger danger' myths, focus heavily on alcohol consumption, and fail to address commonly-held, dangerous beliefs about gender. For example:

- The Australian Catholic University's *Avoidance Strategies* webpage states that "there are things you can do to minimize the risk of being in a difficult situation and being sexually assaulted". It advises students against giving "mixed messages" and states that they should "be sure that your words do not conflict with other signals such as eye contact, voice tone, posture or gestures".⁴⁷ This suggests that things such as eye contact and posture invite sexual assault, something that is not only demonstrably false, but also places blame on the victim.
- Deakin University's *Safety Tips* webpage notes that "offenders target vulnerability" and suggests that students should use "positive body language, such as good posture".⁴⁸ This 'tip' again places the blame on the victim, ignores that students are most likely to be sexually assaulted by someone that they know, and disregards that those with disabilities – who may in fact be physically unable to use "positive body language" – are statistically more likely to experience sexual assault.
- The University of Melbourne's *Online dating safety tips* webpage tells students to "offer to pay half the bill so you won't feel under any obligation to return to the favour" and suggests that students "keep in mind that it is always possible for people to misrepresent themselves".⁴⁹
- The University of Wollongong's *Personal Safety* webpage contains a document titled 'How To Avoid Being Assaulted' that advises students to "walk with a friend" and states "if you are attacked, don't resist. Try to avoid being seriously injured".⁵⁰

Such 'safety tips' have frequently been accompanied by a range of related 'rape prevention' initiatives across Australian university campuses. Such initiatives have included:

- Distribution of 'rape whistles';
- Self-defence classes for women;
- Increased security presence on campus;
- Night escorts; and/or
- 'Awareness' posters.

Educational programs which have been used in university residences and colleges have also suffered from similar weaknesses. For example, one popular program "Avoiding Date Rape" provided by former police

⁴⁷ Australian Catholic University (2016). *Safety Strategies*. [online] Available at: https://students.acu.edu.au/student_life/healthy/respect._now._always_acus_commitment_to_safe,_respectful_campuses/safety_strategies [Accessed 5 Nov. 2016].

⁴⁸ Deakin University, (2016). *Safety tips when out and about*. [online] Available at: www.deakin.edu.au/students/safety-and-security/safety-tips-when-out-and-about [Accessed 3 Nov. 2016].

⁴⁹ University of Melbourne, (2015). *Safer Community Program*. [online] Available at: safercommunity.unimelb.edu.au/tips/online [Accessed 10 Nov. 2016].

⁵⁰ University of Wollongong - Safeguarding UOW. (n.d.). *How to avoid being assaulted or being the victim of a robbery*. [online] Available at: www.uow.edu.au/content/groups/public/@web/@bg/documents/doc/uow002497.pdf [Accessed 10 Nov. 2016].

officer Brent Sanders, teaches strategies such as threading keys between fingers while walking in car parks, and a combat move sequence that involves attacking the “eyes, throat, nose and groin”.⁵¹

While often billed as ‘sexual assault prevention programs’, these kinds of initiatives and ‘safety tips’ are problematic in that they:

- Perpetuate ‘stranger danger’ narratives;
- Fail to understand the ‘freeze’ response that many people experience when confronted with sexual violence; and/or
- Can trigger existing survivors who may be present and make them feel guilty or inadequate for failing to have acted in the recommended, prescribed way.

Educational programs can also prove problematic if:

- They ignore the needs of LGBTIQ young people and/or people with disabilities;
- Are not culturally sensitive or appropriate;
- Are delivered by untrained people (EROC Australia is aware that student leaders on campuses and at residences and colleges are often expected to deliver consent education to their peers);
- Do not recognise the potential for both survivors and perpetrators to be present;
- Focus primarily on the legal aspects of sexual violence while ignoring the more complex issues surrounding communication, power and negotiating consent;
- Place the onus on women to act as sexual gatekeepers;
- Treat male sexual aggression as inevitable or natural;
- Demonise alcohol and blame binge-drinking culture rather than rape culture;
- Ignore the role of bystanders and others who can either contribute to or interrupt cultures of abuse;
- Are delivered as one-off, ‘tick the box’ sessions;
- Do not provide opportunities for reflection and growth;
- Are not underpinned by workable, evidence-based theories of change; and/or
- Were not developed in consultation with young people and are not evaluated by young people.

A recent survey conducted by community campaigning group Fair Agenda found that of 217 university residential facilities attached to universities in Australia, 87 have indicated that they will run some kind of sexual assault prevention training in 2017. However, of those 87 residences, only around 30 have indicated that they will include a sexual assault service as per best practice guidelines, which highlight the need for a trauma-informed facilitator.⁵²

According to Professor Moira Carmody, who has worked on sexual assault prevention and sexual ethics since 1983, many of the current programs that will be used in residential facilities in 2017 do not meet with the National Standards for the Prevention of Sexual Assault Through Education.⁵³ These guidelines were developed in 2009 by the National Association of Sexual Assault Violence Services, and Professor Carmody was a lead contributor on the project. As Professor Carmody notes:

⁵¹ Brent Sanders Consulting. (n.d.). *University Seminars*. [online] Available at: www.brentsandersconsulting.com.au/ [Accessed 1 Jan. 2017].

⁵² Funnell, N. (2016). *Police reveal what the ‘secretive’ universities didn’t want you to know*. [online] news.com.au. Available at: www.news.com.au/lifestyle/real-life/news-life/police-reveal-what-the-secretive-universities-didnt-want-you-to-know/news-story/0dbef6b5d42ed402e39b47010e570f1c [Accessed 6 Dec. 2016].

⁵³ Carmody, M., Evans, S., Krogh, C., Flood, M., Heenan, M., and Ovenden, G. (2009). *Framing best practice: National Standards for the primary prevention of sexual assault through education*. [online] National Sexual Assault Prevention Education Project for NASASV. Available at: www.nasasv.org.au/Standards.htm [Accessed 14 Nov. 2016]

“[Based on the sexual assault prevention programs scheduled to be run in 2017 at Australian universities] it seems that a lot of universities are not applying their own standards of academic rigour when it comes to the sexual assault prevention programs they implement to support students. This suggests they don’t understand that wide body of international research [on how to effectively deliver sexual assault prevention training] or there is an institutional failure, where they are not taking the issue seriously. The evidence is clear that one-off programs don’t work at changing behaviour. [University staff] really shouldn’t be running these sessions, unless they have been trained by people who know what they are doing. Many of them may themselves be struggling to work through their own values and assumptions about sexual assault, and they could actually do more harm than good.” (obtained by interview, December 2016)

On February 12 2016, Universities Australia – the peak body representing Australia’s university sector – launched *Respect.Now.Always*, describing it as a campaign that “seeks to prevent sexual assault and harassment by raising awareness, support students in need of help and give bystanders the confidence to speak up”.⁵⁴ At the time of writing, Universities Australia has provided the Australian Human Rights Commission with funding to undertake the university sexual harassment and assault prevalence survey, and has distributed a series of posters to universities as part of the *Respect.Now.Always* campaign. However, there is no other publicly available information about *Respect.Now.Always* to suggest that any future initiatives have been planned, or that monitoring and evaluation of the existing campaign will be carried out. There is also no available information regarding the origins of the *Respect.Now.Always* campaign, who was involved in the campaign design, the overall objectives of the campaign, or what the intended outcomes are and how they will be measured. EROC Australia notes that the most recent strategic plan developed by Universities Australia for 2014-2016, did not forecast or include any mention of Universities Australia participating in a sexual assault prevention campaign.

As part of the *Respect.Now.Always* campaign, a series of posters were distributed to universities across the country. The posters (see below) depict images of both women and men and slogans such as “I felt unsafe around him”, “I should feel safe where I live”, and “a group of guys took it too far”, all followed by “So here’s what I did”. In much smaller print at the bottom of each poster is the telephone number for university security services and/or external support services, such as the national sexual assault helpline, 1800 Respect. EROC Australia notes that:

- The posters refer students to campus security services, some of whom may not have received training to respond to sexual assault disclosures;
- The posters propose unhelpful or simplistic ‘solutions’ (such as “better lighting on campus”) which perpetuates misconceptions about rape (such as that most rape is committed by strangers in open public walkways);
- The posters fail to address perpetrators of sexual violence and/or harassment;
- The posters often place the responsibility for addressing sexual violence on survivors and women;
- The posters mostly fail to identify sexual violence as a crime, or provide information about university misconduct policies or complaints procedures;
- Where reporting to police is suggested as an option for students, no telephone number has been provided. This is particularly problematic for international and study abroad students who may not be aware of the local police assistance number.

⁵⁴ Universities Australia (2016). *Respect.Now.Always. University sector launches new campaign*. [online] Available at: <https://www.universitiesaustralia.edu.au/Media-and-Events/media-releases/Respect--Now--Always--University-sector-launches-new-campaign#.WGn1tRt9600> [Accessed 13 Feb. 2016].

EROC Australia believes that these posters are demonstrative of a university sector that continues to fail to adequately understand and respond to sexual violence in its communities. The posters are, at best, vague and unhelpful. At worst, they perpetuate stranger-danger 'rape myths' with several posters featuring photos of Vice-Chancellors and promises to improve lighting and security presence on campus, but little else.

A poster featuring a close-up photograph of a young woman with dark, curly hair, resting her chin on her hand and looking directly at the camera with a serious expression. The background is dark and slightly blurred.

A GROUP OF GUYS TOOK IT TOO FAR. SO HERE'S WHAT I DID.

We want these to be the best years of your life, so if you or someone you know has experienced sexual assault or harassment, support and help are available.

 UNIVERSITIES AUSTRALIA |  THE UNIVERSITY of ADELAIDE

RESPECT. NOW. ALWAYS.

- > CONTACTED CAMPUS SECURITY ON NORTH TERRACE AND THEBARTON: 8313 5444; ROSEWORTHY: 8313 7999; WAITE: 8313 7200; THE VILLAGE: 8463 2000
- > SOUGHT SUPPORT FROM STUDENT CARE WELFARE OFFICERS ON 8313 5430
- > SPOKE TO UNIVERSITY STUDENT COUNSELLORS ON 8313 5663
- > CALLED THE NATIONAL HOTLINE FOR DOMESTIC VIOLENCE AND SEXUAL ASSAULT ON 1800 737 732
- > FOR RAPE OR SEXUAL ASSAULT I CONTACTED YARROW PLACE ON 1800 817 421 OR AFTER HOURS 8226 8787

University of Adelaide, www.adelaide.edu.au/safecampus/sexual-assault-and-harassment/Respect Now Always - Poster 2.jpg

I FELT UNSAFE AROUND HIM. SO HERE'S WHAT I DID.

We want these to be the best years of your life, so if you or someone you know has experienced sexual assault or harassment, support and help are available.



UNIVERSITIES
AUSTRALIA



THE UNIVERSITY
of ADELAIDE

RESPECT. NOW. ALWAYS.

> CONTACTED CAMPUS SECURITY ON
NORTH TERRACE AND THEBARTON:
8313 5444; ROSEWORTHY: 8313 7999;
WAITE: 8313 7200; THE VILLAGE: 8463 2000

> SOUGHT SUPPORT FROM STUDENT
CARE WELFARE OFFICERS ON
8313 5430

> SPOKE TO UNIVERSITY STUDENT
COUNSELLORS ON 8313 5663

> CALLED THE NATIONAL HOTLINE FOR
DOMESTIC VIOLENCE AND SEXUAL
ASSAULT ON 1800 737 732

> FOR RAPE OR SEXUAL ASSAULT I
CONTACTED YARROW PLACE ON
1800 817 421 OR AFTER HOURS
8226 8787

University of Adelaide, www.adelaide.edu.au/safercampus/sexual-assault-and-harassment/Respect_Now_Always_-_Poster_4.jpg

PROFESSOR GREG HILL,
VICE CHANCELLOR AND PRESIDENT
UNIVERSITY OF THE SUNSHINE COAST

**I WANT OUR
UNIVERSITY TO BE
A PLACE OF SAFETY
AND RESPECT.
SO HERE'S
WHAT WE DO.**

We want these to be the best years of your life, so if you or someone you know has experienced sexual assault or harassment, support and help are available.

UNIVERSITIES AUSTRALIA | University of the Sunshine Coast

RESPECT. NOW. ALWAYS.

► CALLED THE POLICE, CONTACTED CAMPUS SECURITY ON 5430 1222

► SOUGHT SUPPORT FROM STUDENT WELLBEING ON 5430 1226

1800RESPECT
1800 888 888
www.1800respect.org.au

University of the Sunshine Coast, www.usc.edu.au/explore/usc-locations/security-and-safety/respect-now-always

The government statutory agency, The Australian Institute of Family Studies, has advised that there is no reliable evidence to suggest that sexual assault campaigns which are labelled as ‘preventative’ have been at all effective in preventing sexual violence. Further, AIFS notes that in recent years there has been an explosion of ‘awareness’ campaigns, like the *Respect.Now.Always* campaign.

Drawing on prevention campaigns in other fields of public health, AIFS suggests that “a key feature is that primary prevention must move beyond *only* working to change attitudes or improve knowledge about sexual assault. It must target behaviour change that will result in lower levels of sexual violence”. As such, AIFS suggests that, to be effective, prevention campaigns need to:

- Move beyond rape-avoidance training for women;
- Move beyond addressing individual beliefs and perceptions about gender;
- Avoid focusing on risk factors, such as alcohol consumption and drug taking, in isolation from notions of masculinity, femininity, and peer relationships; and
- Reflect the overlap and interconnection between sexual assault and domestic/family violence.⁵⁵

The criteria above suggest a basic framework upon which to build a preventative campaign. Using these criteria, Universities Australia’s *Respect.Now.Always* campaign cannot be considered ‘preventative’, and to label it as such is, at best, disingenuous. To date, the *Respect.Now.Always* campaign has continued to rely on ‘rape myths’ and has failed to move beyond the ‘awareness raising’ and ‘rape-avoidance’ messaging that have plagued the university sector’s response to sexual violence for the past four decades.

(b) Fundamental framing errors: conceptualising sexual assault exclusively as a police matter

The key problem underlying Australian universities’ collective failure to embrace their responsibilities to respond to sexual assault is the common conceptualisation of sexual assault as always, and only, a police matter. This has caused university administrations to overlook and abnegate their own responsibilities surrounding sexual violence, in terms of both prevention and intervention. Today this framing error persists, and has led to universities responding to sexual assault in the sort of ad-hoc, reluctant and legalistic ways that Dr Salter describes above.

Based on our recent experience working with student survivors and their advocates, it is common for university officials to tell student survivors that the university cannot take any action when incidents of sexual assault occur, and that only the police can respond. Alternatively, universities might instruct students that action can only be taken by the university if a police complaint is made and/or a criminal conviction is secured - a process that often takes years. University resources (including websites) also produce confusion by advising students to contact the police, while failing to provide any further information on what avenues for recourse are available at the university level. This has led a number of students to believe that the university complaints process does not apply in cases of sexual assault, and thus they do not lodge a complaint.

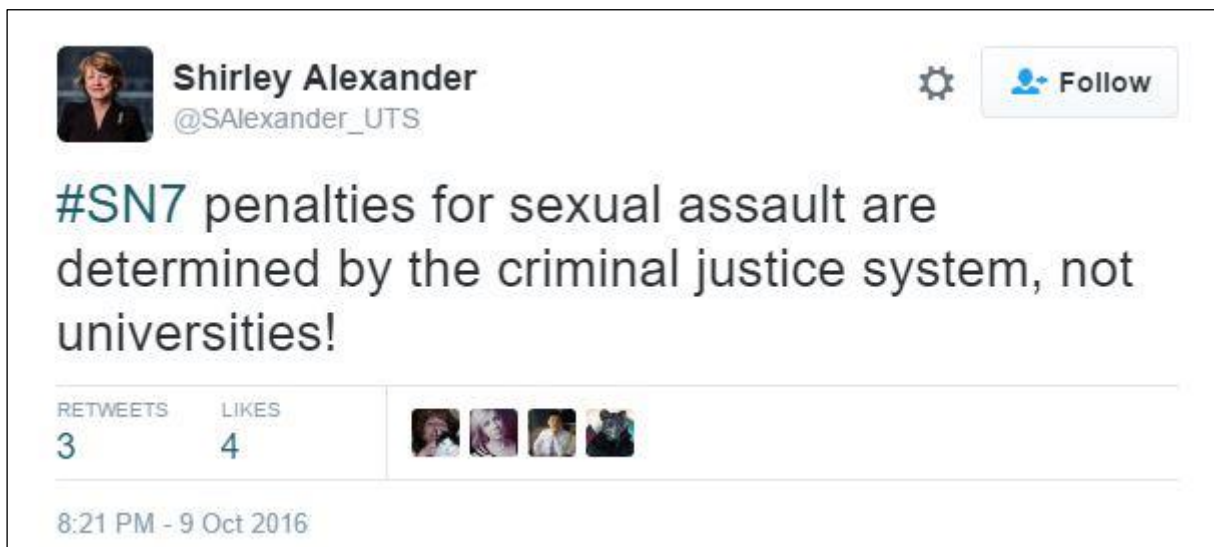
For example, Central Queensland University’s *Respect. Now. Always.* webpage states: ‘if you have been a victim of violence or sexual assault and the crime has just occurred you should always report the incident, as a priority to local police’.⁵⁶ While this advice might be well intentioned, it can often alienate those survivors who do not want to report to the police. It can also lead survivors to conclude that the police are

⁵⁵ Quadara, A. and Wall, L. (2012). *What is effective primary prevention in sexual assault?* Australian Centre for the Study of Sexual Assault Wrap. [online] Available at: <https://aifs.gov.au/publications/what-effective-primary-prevention-sexual-assault/export> [Accessed 19 Dec. 2016].

⁵⁶ Central Queensland University (n.d.). *Respect Now Always - CQU.* [online] Available at: <https://www.cqu.edu.au/student-life/new-students/student-support/respect-now-always>. [Accessed 7 June 2016].

the only available avenue for redress. Federation University’s *Discriminatory and Sexual Harassment Complaint Procedure* similarly states that the university “reserve[s] the right to separately inform Police” if a formal complaint involving criminal conduct is made.⁵⁷ This advice is highly problematic for students who are anxious about police involvement, but who want their university to know of their experience for other reasons, such as changing tutorials, gaining an extension, or having the offender dealt with through student misconduct procedures. The decision to involve police against a survivor’s wishes may also exacerbate existing trauma by further robbing that survivor of control and agency in the process. Similarly, the University of Queensland’s *Sexual Assault* webpage states that “once you are out of immediate danger you can contact one of the Student Services Team for assistance. A trained member of our team will support you throughout the process of reporting to the Police.”⁵⁸ Again, no further information is given concerning how that team might assist the student with navigating university complaints processes or how they might seek disciplinary action against a perpetrator.

The message that only the police can respond to sexual assault is communicated to students through other channels, too. For example, in 2016, following the airing of a Channel 7 *Sunday Night* episode that featured three university rape survivors telling their stories, Shirley Alexander, the Deputy Vice-Chancellor (Education and Students) and Vice-President of the University of Technology Sydney wrote the following on social media: “#SN7 penalties for sexual assault are determined by the criminal justice system, not universities!”⁵⁹



While students and university officials have often assumed that sexual assault is solely the purview of the police, this is incorrect. Sexual assault is *both* a criminal matter, *and* a misconduct matter. College officials do not need to wait for a criminal outcome to make a finding in accordance with their own policies and procedures. By way of analogy, if students within a college system steal from one another, this is both a policing matter involving possible charges of theft, as well as a matter which is captured under college misconduct policies.

⁵⁷ Federation University (2015). *Discriminatory and Sexual Harassment Complaint Procedure*. [online] Available at: policy.federation.edu.au/university/equal_opportunity/ch02.php. [Accessed 7 June 2016].

⁵⁸ University of Queensland Student Services. (n.d.). *Sexual assault*. [online] Available at: www.uq.edu.au/student-services/counselling/sexual-assault [Accessed 7 June 2016].

⁵⁹ Alexander, S. (2016). *#SN7 penalties for sexual assault are determined by the criminal justice system, not universities!* [online] Twitter, 9th October. Available: https://twitter.com/SAlexander_UTS/status/785055000321896449 [Accessed 9 Oct. 2016].

Universities do not possess the power to incarcerate a person or deprive them of their liberty, therefore the threshold for determining that a sexual assault has taken place is substantially lower than that required in a criminal court. In theory, this should make the university complaints process a more accessible avenue for survivors seeking some form of redress and acknowledgement of their experience. However, because there is often significant reluctance to view the matter as anything other than a policing issue, universities will often refuse to conduct sexual misconduct investigations under their own misconduct policies, and may argue that such a process could contaminate a police inquiry.

One survivor, who was told by his university that only the police could respond to his sexual assault, stated:

“They kept pushing the problem away because no one wanted to deal with it. I want the university to realise the gravity of what they have done. I want them to change things. There was gravity in the event itself, and there is equal gravity in how [the university] has dealt with it. [...] Make no mistake I consider the events of my sexual assault and this University's response to be equally despicable. There is a shocking correlation between someone not listening to you say 'stop' and an organisation not listening to you scream 'help'.”⁶⁰

(c) What power do universities have to discipline offenders?

Despite what some students are told, EROC Australia notes that Universities *do* in fact have disciplinary and/or misconduct policies and procedures, some of which have legislative status. Such policies or procedures give university officials or decision-making panels the power to investigate student misconduct, make findings about whether the misconduct occurred, and deliver penalties, including suspension, expulsion or exclusion from university premises. Most university policies define misconduct widely to include academic misconduct such as plagiarism, as well as non-academic misconduct including sexual harassment and assault. Universities *do* have established procedures for responding to sexual assault perpetrated by students, and have the power to discipline perpetrators, although this is not always understood or acted on.

It has been our experience that universities have been reluctant to make decisions when incidents of sexual assault occur, however, as noted by Jackson et al.:

“All Australian public universities are established by Commonwealth, state or territory acts of parliament, and exercise statutory powers for many purposes, including for the purpose of regulating academic behaviour and standards. Accordingly, university decision-makers are bound by rules of natural justice when making decisions that affect the rights of students.”⁶¹

Most university misconduct procedures are governed by administrative law principles that acknowledge and regulate decision-making by non-judicial bodies such as university decision-makers. University disciplinary decisions are often subject to common law judicial review,⁶² and may also be subject to review under judicial review legislation.¹⁵ The administrative law structure gives universities latitude to create disciplinary procedures that can appropriately minimise re-traumatisation for survivors, but it also comes with requirements around procedural fairness which means that universities will be held to standards that

⁶⁰ Funnell, N. (2016). *The shocking way sexual violence is handled at Australian universities*. [online] news.com.au. Available at: www.news.com.au/lifestyle/real-life/news-life/the-shocking-way-sexual-violence-is-handled-at-australian-universities/news-story/fdb2f5d827ee8f6f4c124af11847aa25 [Accessed 29 Jun. 2016].

⁶¹ Jackson, J.G., Fleming, H., Kamvounias, P. and Varnham, S., (2009). *Student grievances and discipline matters project: final report to the Australian Learning and Teaching Council*, p. 19 [online] epubs.scu.edu.au/cgi/viewcontent.cgi?article=1014&context=chan_pubs [Accessed 11 Nov. 2016].

⁶² Lindsay, B. (2007). Complexity and Ambiguity in University Law: Negotiating the Legal Terrain of Student Challenges to University Decisions. *Australian and New Zealand Journal of Law and Education*, 12, pp.7-10.

protect alleged perpetrators' rights for procedural fairness. EROC Australia notes that universities use their decision-making abilities to discipline students for both academic and non-academic misconduct, but are seemingly less willing to do so for incidents of sexual violence within their communities.

In addition, when universities defer responsibility for sexual assault to the police and the criminal justice system, they are demonstrating a lack of understanding of the efficacy of these institutions. Conviction rates for sexual assault are very low in Australia, and have further declined in recent years. For example, of reported sexual assaults in 1990-2005, only 11.5% received a conviction.⁶³ In addition, criminal trials are notoriously re-traumatising for survivors, particularly the process of cross-examination.⁶⁴ It often takes significant periods of time for such matters to come to trial, meaning that criminal justice proceedings are not well placed to deal with survivors' immediate needs for safety on campus and their desire to protect other students. Writing about similar endemic problems in the criminal justice system in the United States, associate attorney Amy Chmielewski has stated that "often, the educational community provides the last meaningful chance to recognize a victim's injury, censure an offender's conduct, and communicate disapproval of sexual assault in general, with the possible result of deterring similar future conduct".⁶⁵

Contrary to common rhetoric, universities are uniquely placed to create appropriate disciplinary procedures that adequately address sexual assault perpetrated by their students and allow student survivors to continue with their studies. In failing to do so, Australian universities have failed to foster a safe learning environment for students who have been impacted by sexual violence.

(d) Learning from the past

For universities to adequately address sexual assault, many will need to substantially reframe the issue of sexual assault in a number of significant ways. They will also need to reflect on how previous policies and approaches at the university level have contributed to problematic practices that exist in the present.

Universities should be encouraged to unpack why and how this matter has often been framed as strictly a policing or judicial matter, and the consequences for student survivors of this narrow framing. Universities will also need to interrogate why, historically, sexual assault has often been treated as a private concern, or a woman's responsibility, and what role universities have played in perpetuating that arrangement. Further, universities will need to reflect on the ways in which their own current approaches to sexual assault may have evolved out of - or still be rooted in - now grossly outdated understandings of sexual assault prevention and intervention.

Understanding the historical trajectory and evolution of this issue within university communities will likely prove an important first step for universities in understanding why their own systems exist in the current format they do, and where these systems have come from.

Until such reflective practice is performed, EROC Australia anticipates that we will continue to witness ineffective and unsophisticated 'prevention campaigns' such as the *Respect. Now. Always* campaign.

⁶³ Daly, K. (2011), 'Conventional and Innovative Justice Responses to Sexual Violence' (12) *ACSSA Issues* 1, 1, 4; Daly, K. & Bouhours, B. (2010) 'Rape and Attrition in the Legal Process: A Comparative Analysis of Five Countries', 39 *Crime and Justice* 565, 602. See also Heath, M. (2007), 'Lack of Conviction: A Proposal to Make Rape Illegal in South Australia', 27, *Australian Feminist Law Journal* 175, 176.

⁶⁴ Braun, K. (2014), 'Legal Representation for Sexual Assault Victims – Possibilities for Law Reform') 25 *Current Issues in Criminal Justice* 819, 821; Haley Clark, "'What is the Justice System Willing to Offer?'" Understanding Sexual Assault Victim/Survivors' Criminal Justice Needs' [2010] (85) *Family Matters* 28, 28; Australian Law Reform Commission, *Family Violence – A National Legal Response*, Report No 114 (2010), 1115-7.

⁶⁵ Chmielewski, A. (2013) 'Defending the Preponderance of Evidence Standard in College Adjudications of Sexual Assault' 1 *B.Y.U Education and Law Journal* 143, 170.

While change is overdue, universities will not be able to look forwards until they have first spent some time looking backwards.

5. Barriers and challenges when reporting sexual assault within university communities

(a) Barriers to reporting sexual assault at university

The reasons survivors do not disclose their assaults are incredibly complex and personal. EROC Australia notes that some survivors do not disclose their experiences for several years. In university contexts, only a very small fraction of survivors *formally* report their experiences, including reporting through official grievance or student misconduct processes.⁶⁶ Others may informally report their experience to individuals associated with the university (such as disclosing to a tutor, lecturer, university doctor, counsellor, security, etc.) while others may choose not to disclose to anyone in the university setting.

However, it should be noted that students do not always understand or draw a meaningful distinction between informal and formal reports to staff, and that this distinction is not always explained to them. For example, in some instances, sexual assault survivors have written to or met with a dean of students regarding their experience, and have then assumed that this would constitute a 'formal report', when in fact it did not. Unless the survivor's rights and options have been clearly explained to them, they may draw false conclusions about the status of their case (including whether their disclosure is recorded and reflected in formal university figures).

(i) Barriers to informal reporting

The Australian Bureau of Statistics has found that 14% of female survivors of sexual assault do not disclose the assault to anyone at all.⁶⁷ Some of the common barriers to general disclosure include:

- **Emotional and psychological barriers:** fear of not being believed, fear of being blamed, shame, shock, disbelief, self-blame, denial or minimisation, confidentiality concerns, etc.
- **Social barriers:** feeling isolated, not feeling supported, fear of reprisals, backlash or ostracism, fear that everyone will find out, fear that people will 'side' with the perpetrator
- **Linguistic and communication barriers:** not speaking the dominant language used in reporting systems or being deaf or hearing impaired
- **Cultural barriers:** cultural stigma or taboos around sexual assault, sex or victimisation
- **Transport or geographical barriers:** survivors who do not drive, or those who live in very remote areas may have difficulty getting to services
- **Structural barriers:** discrimination and prejudice based on a person's gender, sexuality, disability status etc.
- **Community attitudes and beliefs:** victim-blaming attitudes, myths about sexual assault and belief systems which minimise perpetrator responsibility

(ii) Barriers to formal reporting through official university channels

In addition to these barriers to general disclosure, survivors face multiple further barriers to making an official report or complaint to the university. Some of these barriers identified by survivors include:

- Not knowing that the university has an obligation to respond to sexual assault complaints;

⁶⁶ University of Sydney, (2016). *Creating a Safer Community for All: Sexual Harassment and Assault on Campus*. [online] Sydney, p.1. Available at: sydney.edu.au/dam/corporate/documents/campus-life/emergencies-and-personal-safety/safer-community-for-all-final-report.pdf [Accessed 16 May 2016].

⁶⁷ Australian Bureau of Statistics, *Sexual Assault in Australia: A Statistical Overview* (2004), p55.

- Not knowing that the university has a formal reporting mechanism;
- Not knowing the purpose of formal reporting;
- Not knowing how to locate policies and procedures;
- Not understanding those policies or procedures once located;
- Uncertainty as to who will have access to an official complaint once made, how long it will be stored for, or whether it will be shared with the perpetrator;
- Uncertainty regarding what the timeframe for resolving a complaint might be or what the possible or likely outcomes might be;
- Not having trust or faith in the institution (particularly in cases where students have heard ‘horror’ stories from other survivors);
- Not knowing that informal reports to lecturers (including in writing) do not constitute an official report; and
- Not knowing whether there may be any repercussions or reprisals for reporting, including academic repercussions (this is particularly relevant in cases where a survivor is reporting a staff member).⁶⁸

(b) Policies are difficult to locate, particularly for a person in trauma

It is EROC Australia’s experience that many student survivors are simply unaware that a formal system for reporting sexual assaults exists at their educational institution, as in many cases, these systems are often not adequately publicised or promoted. Even when policies are located, details are often scattered around multiple policies, rather than being centralised in one clear policy document. This decreases reporting as survivors are unable to locate information explaining their rights within the university. It also means that once a report is made to the university, the survivor is unable to advocate for themselves or ensure the university is complying with their own policies. These concerns led EROC Australia in 2016 to undertake a project to identify and locate all relevant sexual harassment and assault policies relating to the 39 universities in Australia. The links to these documents are published on our website at endrapeoncampusau.org.

The problem is clearly demonstrated by the many university webpages dedicated to sexual assault that do not provide any links to, or explanations about, university policies, or information about making formal complaints. For example:

- The Australian National University’s *Finding help and support if you have been sexually assaulted* webpage provide links to support services, and contact details for the Dean of Students who can provide “advice on formal grievance resolution procedures”. However, it does not provide any information about what those procedures are, or any links to the policies and procedures.⁶⁹

⁶⁸ In 2009, the Australian Learning and Teaching Council commissioned a project to review student grievances and discipline matters in the Australian university sector. The project examined both academic and non-academic misconduct and grievance procedures. Key findings from the project were that: policies were difficult to locate and relied too heavily on legal jargon, students were frustrated by the complex nature of grievance procedures and the length of time taken to address complaints, and staff members were not adequately trained to deal with complaints and/or appeals. EROC Australia notes that these findings are consistent with our experiences and the experiences of the survivors we support. The *Student grievances and discipline matters project: final report to the Australian Learning and Teaching Council* (Jackson, et.al., 2009) is available online at: epubs.scu.edu.au/cgi/viewcontent.cgi?article=1014&context=chan_pubs

⁶⁹ Australian National University (n.d) *Finding help and support if you have been sexually assaulted* [online] Available at: www.anu.edu.au/students/health-wellbeing/counselling/finding-help-and-support-if-you-have-been-sexually-assaulted [Accessed 1 Dec 2016]

- The University of Central Queensland's *Respect. Now. Always.* webpage refers students to police, counselling service and on campus security but does not indicate who at the university students can make formal reports to, or make reference to the university's sexual assault or misconduct policies.⁷⁰
- Federation University's *Respect. Now. Always* page provides contact details for 'Equity and Equal Opportunity' but does not indicate what services they provide, or whether they can take formal reports of sexual assault. It does not mention whether the university's sexual assault or misconduct policies.⁷¹
- The University of Melbourne's *Help for Sexual Assault Issues* webpage provides details of who students can report to, but does not include information about what reporting entails, or information about misconduct policies.⁷² This means that survivors are unable to make an informed decision about whether they want to make a report.
- The University of Queensland's sexual assault webpage states that a student can contact the Student Services Team for assistance after a sexual assault and that they will "support you throughout the process of reporting to the Police".⁷³ It does not indicate whether they can provide you with other assistance, particularly if you do not want to make a police report.

(c) Policies may be confusing, out-of-date, inconsistent, or incomplete

Australian universities' policies and procedures regarding sexual assault and harassment are often overlapping, confusing, inconsistent, incomplete, or in some cases non-existent. This means that it is extremely difficult for students who have been sexually assaulted to identify where they can get help at the university, who they can report the assault to, and what formal complaint procedures are. Where this is the case, a survivor who wants to seek help from the university or make an official report must not only overcome all the barriers to reporting outlined above, but they must also wade through multiple policies and webpages in order to try to discover where to get help at the university.

One key problem is that the language used in these policies and procedures is frequently complicated, legalistic and difficult for students to digest. For students whose first language is not English, understanding university policy is made even more difficult.

Another key problem is that many policies do not include behavioural definitions of sexual assault and harassment, or only refer to 'sexual harassment', while omitting any reference to sexual assault. Of those university policies that do refer to sexual assault, it is often ambiguous as to whether the policy extends to assaults which happen off campus, where a significant number of sexual assaults involving students take place. In cases such as these, the survivor may not see their assault as a 'university issue', and may determine that they are unable to make a complaint.

Another problem is that they frequently do not give the name and contact details of staff members designated to receive and deal with formal reports, meaning that it is unclear how survivors can initiate the procedure outlined, including disciplinary procedures.

⁷⁰ Central Queensland University (n.d) *Respect. Now. Always.* [online] Available at: <https://www.cqu.edu.au/student-life/new-students/student-support/respect-now-always> [Accessed 1 Dec 2016]

⁷¹ Federation University (n.d) *Respect. Now. Always.*[online] Available at: [federation.edu.au/current-students/assistance-support-and-services/student-support-services/white-ribbon/respect-now-always](https://www.federation.edu.au/current-students/assistance-support-and-services/student-support-services/white-ribbon/respect-now-always) [Access 1 Dec 2016]

⁷² The University of Melbourne, *Help for Sexual Assault Issues.* [safercommunity.unimelb.edu.au/help-for-sexual-assault-issues](https://www.safercommunity.unimelb.edu.au/help-for-sexual-assault-issues).

⁷³ The University of Queensland, *Sexual Assault*, www.uq.edu.au/student-services/counselling/sexual-assault.

Of further concern are university policies that do not present disciplinary action as a key part of responding to reports of sexual assault perpetrated by other students. For example, the Australian National University (ANU)'s policies and procedures relating to sexual assault span over at least four different documents, not all of which refer to one another. ANU's only sexual assault specific policy, the *Staff Protocol for Responding to an Allegation of Recent Sexual Assault*, outlines how staff should respond to disclosures of sexual assault, but does not provide key information about what action can be taken against perpetrators, including interim exclusion from premises.⁷⁴ This is despite the fact that certain staff members are empowered by the *Discipline Rule*, a university statute, to take such action⁷⁵. It states that the Student Critical Incident Policy and Procedure must be followed, however these documents do not refer to disciplinary action, or acknowledge that the critical incident may involve violence perpetrated by another student. This is problematic because it means that the staff designated to deal with critical incidents are not required to consider whether disciplinary action against an alleged perpetrator is appropriate, and may not understand what disciplinary procedures exist at the university.

(d) Policies contain time limits on reporting

Several universities place time limits on reporting misconduct, including sexual assault and harassment. For example:

- The University of Queensland's policy requires grievances to be lodged within 40 days of the action⁷⁶
- The University of Melbourne's policy requires complaints to be lodged within 12 months of an incident.⁷⁷
- The University of Sydney may determine that 'no further action' should be taken regarding a complaint if the conduct occurred more than 12 months prior.⁷⁸
- The University of New England's policy requires complaints of harassment to be made within 6 months of the incident unless 'good reasons are shown'.⁷⁹
- The Australian Catholic University's policy requires complaints to be lodged within 20 working days of the sexual assault or harassment.⁸⁰

⁷⁴ Australian National University (n.d.) *Staff Protocol for Responding to an Incident of Sexual Assault* [online] Available at: www.anu.edu.au/students/services/health-wellbeing/staff-protocol-for-responding-to-an-allegation-of-sexual-assault [Accessed 24 Dec 2016]

⁷⁵ The Australian National University Discipline Rule 2015 (Cth) [online] Available at: <https://www.legislation.gov.au/Details/F2015L02046>

⁷⁶ University of Queensland (2015) *Student Grievance Resolution - Procedures* [online] Available at: ppl.app.uq.edu.au/content/3.60.02-student-grievance-resolution [Accessed 24 Dec 2016]

⁷⁷ University of Melbourne (2016) *Student Complaints and Grievances Policy* (MPF1066) [online] Available at: policy.unimelb.edu.au/MPF1066 [Accessed 24 Dec 2016]

⁷⁸ University of Sydney (2015) *Student Complaints Procedures (2015)* [online] Available at: sydney.edu.au/policies/showdoc.aspx?recnum=PDOC2015/408&RendNum=0 [Accessed 24 Dec 2016]

⁷⁹ University of New England (2015) *Sex-Based Harassment Policy* [online] Available at: policies.une.edu.au/view.status.php?id=00138 [Accessed 24 Dec 2016]

⁸⁰ Australian Catholic University (2016) *Procedures for Student Complaint Management* [online] Available at: handbook.acu.edu.au/handbooks/handbook_2016/general_information/student_complaint_management_-_policy_and_procedures/student_complaint_management_procedures [Accessed 24 Dec 2016]

Academic and clinical research has repeatedly demonstrated that survivors of sexual assault frequently do not report the assault for a significant period of time due to trauma. For example, The Australian Institute of Criminology reports that “delayed disclosure is a common feature of sexual abuse”.⁸¹

Given this tendency for delayed reporting, time limits mandated by universities are likely to significantly decrease sexual assault reporting, and prevent survivors from seeking redress at their place of education. Even in cases where the university may provide an exemption for a survivor if they do make a report, survivors who read these policies who were sexually assaulted outside the time limit may likely conclude that they are not able to make a report.

(e) Policies encourage informal resolution with the perpetrator

Many university policies and webpages that cover sexual assault state that before making a report to the university, students should try to resolve their problem informally with the other party. While such advice may be appropriate for resolving petty conflicts, encouraging survivors of sexual assault to personally approach the person who assaulted them is unsound, unsafe and not trauma-informed. These policies deflect responsibility for the resolution of sexual assault complaints onto the survivor. They are also likely to deter reporting from survivors who believe that nothing will be done if they do not first attempt informal resolution with the perpetrator.

Some examples of this include:

- University of Sydney’s sexual assault webpage links to a complaints webpage that states that before a student submits a formal complaint, “you should seek to resolve your issue informally. Approach the person you believe is responsible and: tell them what the issue is; ask them to stop; or to behave differently”.⁸²
- The University of New England’s *Sex-Based Harassment Policy*, which covers sexual assault and rape, states that the complainant does not have to approach the alleged perpetrator but that “in some instances, it is quite appropriate for the person having experienced alleged sex-based harassment/discrimination to go to the alleged perpetrator of the action and attempt to sort the matter out directly with that person.”⁸³
- Federation University’s *Discriminatory and Sexual Harassment Complaint Procedures* states: “If your complaint is about a person's behaviour, you should consider telling the person that it is not acceptable and/or offensive or hurtful. Sometimes people behave inappropriately without realising it or considering the repercussions.”⁸⁴

⁸¹ Lievore, D. (2004). *Recidivism of sexual assault offenders: Rates, risk factors and treatment efficacy*, vol. 80, Australian Institute of Criminology. [online] Available at: www.aic.gov.au/media_library/archive/publications-2000s/recidivism-of-sexual-offenders-rates-risk%20factors-and%20treatment-efficacy.pdf

⁸² University of Sydney, (n.d) *Making a Complaint* [online] Available at: sydney.edu.au/student_affairs/complaints/making_a_complaint.shtml [Accessed 3 Oct 2016]

⁸³ University of New England (2015), *Sex-based harassment policy* [online] Available at: policies.une.edu.au/view.current.php?id=00138 [Accessed 3 Oct 2016].

⁸⁴ Federation University (2015). *Discriminatory and Sexual Harassment Complaint Procedure*. [online] Available at: policy.federation.edu.au/university/equal_opportunity/ch02.php. [Accessed 7 June 2016]

(f) Complaint portals are not survivor friendly or trauma informed

In addition to encouraging informal resolution with the perpetrator, complaints portals are not survivor-friendly in other ways. Federation University's *Discrimination and Sexual Harassment Complaints Procedure* cautions against the survivor discussing the assault with support people, warning that disciplinary action could result if there is a breach of confidentiality:

You may feel the need to tell a trusted friend, family member or colleague about your complaint, but you should be careful and always treat the situation as confidential. If you lodge a formal complaint (Stage 5) then the importance of confidentiality in this process is paramount. If you feel you need to talk to a friend or family member about your complaint during the investigation stage, you should first discuss this with the investigator looking into your complaint. At the initial interview and during the investigation stage, all parties involved will be warned of the consequences if there is a breach of confidentiality. These consequences include disciplinary action under the University Student Discipline Legislation, the University Collective Agreement for Academic and General Staff or in accordance with the University's disciplinary procedures for TAFE teachers.

Numerous survivors have informed EROC Australia that they were 'scolded' by administrative staff for discussing their assault with several people prior to making a complaint. This is highly disturbing, as a survivor's support network is often a crucial component of their healing and recovery.

Federation University's sexual harassment complaint procedure also advises that disciplinary action could be taken against the student if it is believed that the complaint was unfounded and not made in good faith.⁸⁵

There are several other problems associated with reporting portals currently used by various universities including:

- It is not always clear where the information provided by the student will be stored, or who will have access to read it;
- It is not clear what the process entails, how long it will take, or what the expected outcomes or benefits might be for the complainant;
- Not all complaint portals provide a confirmation on lodgement of a complaint;
- It is not clear what information will and will not be shared with the perpetrator as part of procedural fairness;
- Not all complaints portals inform the complainant of their rights;
- Complaint portals do not always provide clear information on what a person can expect next, particularly in terms of what the timeline of a complaint might be, when they should expect to be contacted, how they will be communicated with, or what their further options are;
- Complaints portals do not always contain links to other services (such as mental health support services) and very few integrate an understanding of trauma in their design (for example, by acknowledging that making a complaint of sexual assault can be challenging and that a person may need to take breaks, or have a support person with them while they write their complaint);
- These portals rarely provide an explanation of how they differ from other complaint channels that survivors may have already explored, or what further benefits they offer (for example, how they differ from a residential college's own complaint processes).

⁸⁵ Ibid.

Several of these problems arise from the fact that universities rely on the same complaints portal to deal with sexual assault complaints as would be used for academic complaints. Creating a specific, trauma-informed mechanism for students to report sexual assault complaints is one way of addressing this issue.

(g) Some policies mandate police involvement

As previously mentioned, a number of universities have policies mandating that all official reports of sexual assault are passed along to police. Others, such as Federation University, reserve the right to pass information along to police.⁸⁶ For survivors who do not wish to report to police, such policies may deter them from reporting, for fear of having control stripped from them.

In our experience, there are many reasons why survivors may not want police involvement, including fear of perpetrator reprisals, concern for the perpetrator or their family, knowledge or experience of the ineffectual and traumatic nature of the criminal justice system, wanting to seek redress more locally, and a need to address their more immediate needs first. It is appropriate for universities to support students to make police reports if they wish to, but not to put pressure on them to do so, or make it a precondition to accessing university complaint procedures or support services in the university. Pressure to report to police, campus security, or any other group can exacerbate feelings of powerlessness and compound existing trauma.

Despite this, it is EROC Australia's experience that when survivors make reports of sexual assault to universities, they are frequently told that the university cannot or will not do anything without police involvement. For example, in Case Study Three (above, p.12), the survivor was advised by university staff that no action could be taken unless a police report was made. In Case Study Four (above, p.12) the survivor was told the same thing, but when he made a police report, he was then told that they were now unable to take any action *because* the police were involved.

(h) Some policies mandate that security be contacted

Various universities also mandate that if a sexual assault is reported on campus, campus security will immediately be contacted (regardless of whether the survivor wants this or not). Not all campus security staff are expertly trained in how to respond to sexual assault and in some cases, campus security may have previously behaved in ways that eroded trust by alienating survivor groups on campus. In some cases, it has been alleged that campus security have taken unreasonable lengths of time to hand over information or evidence to police or other investigating bodies, including the university.

(i) Policies at residential facilities are not harmonised with university policies

There are approximately 220 residential facilities associated with universities across the country. These facilities may be owned by a university, privately owned with a contractual relationship with a university, or operate completely independently from any university. This creates a series of complicated, overlapping (and sometimes contradictory) reporting systems. This may be particularly troublesome in cases where, for example, a student from one college or residence is assaulted by a student from another college, and both residences have differing policies and different relationships to the university itself.

⁸⁶ Ibid.

Furthermore, in our experience, when a sexual assault occurs within a residential facility, it is common for residences to deal with those reports on ad hoc basis, rather than complying with university policy, or internal policies, which sometimes do not exist. This means that survivors have no certainty as to how their report will be managed, are often not afforded procedural fairness or appropriate confidentiality and control over the process, and often have no ability to effectively advocate for themselves or exercise rights of appeal.

Issues of partiality and conflict of interest may also arise, particularly when heads of hall or other staff members with close connections to the students involved in the matter are tasked with investigating the report. Maintaining confidentiality in such circumstances may also be difficult given the tight-knit nature of many residential communities. This creates a potential for reprisals or social ostracism of survivors by their peers.

One survivor who stated that she was raped in her residential college in 2014 reported it to staff at the college, but was told that if she wanted to pursue the matter she would have to sit before a formal disciplinary panel which included a fellow college student along with a staff member and lawyer for the college.⁸⁷ She stated: “The thought of having to retell the entire event in detail is just horrific ... Having to say it in front of one of my own peers [would have been] awful. The fact that they were using the same process they use to resolve matters like petty theft between students made the whole thing feel very trivialised, like they didn’t understand the gravity of what had occurred.”⁸⁸

Another key concern is that most universities do not require residences to automatically report incidents of sexual assault and harassment to the university. This means that universities are unable to have oversight over how residences manage reports, or gather key data that would allow them to analyse the nature of the problem at the university. It also means that where the perpetrator is also a student of the university, the university does not undertake its own disciplinary procedures unless a victim pursues two complaints through both the college grievance procedure and the university grievance procedure. This is particularly problematic as many survivors may not realise that they can also pursue a complaint at the university-level, and may not be informed of this right.

(j) Some staff members are untrained or do not understand university policies

It is also common in EROC Australia’s experience for reports of sexual assault to be dealt with by staff who are untrained in these roles, or who do not understand their university’s policies. This can result in survivors not being informed of their rights under university policy, being given incorrect information, or investigations being dealt with improperly.

For example, research conducted in 2016 on ANU’s response to sexual assault found that university officials frequently had little or no knowledge of disciplinary procedures.⁸⁹ Researcher Ellie Greenwood interviewed five ANU Women’s Officers and nine ANU officials, mostly heads of residential halls and colleges. The research found that only one ANU official interviewed had a working knowledge of disciplinary procedures.

⁸⁷ Funnell, N. (2016) *Shocking sexual assault statistics revealed as more victims come forward to news.com.au*. [Online] news.com.au. Available at: www.news.com.au/lifestyle/real-life/news-life/shocking-sexual-assault-statistics-revealed-as-more-victims-come-forward-to-newscomau/news-story/7430ae1f269d97cc020fdc92b312abf9. [Accessed 6 July 2016].

⁸⁸ Ibid.

⁸⁹ Ellie Greenwood, ‘Studying in the Shadow of Sexual Violence: Re-Orienting Australian University Responses to Sexual Assault’ (2016), Honours Thesis ANU College of Law, submitted separately to the AHRC.

Three heads of hall admitted they had little or ‘no idea’ what happens in investigations, even though they have the power to trigger and undertake investigations themselves. Further, Greenwood’s research showed that some heads of hall had little understanding of their own capacity to discipline. One head of hall at ANU stated that “the university is not really going to do a police-type investigation and it shouldn’t. So therefore under what basis can they do disciplinary action against a student? All they can really do is just separate them and leave it to the police to resolve.” Another stated: “we don’t hold ourselves out as a fact-finding police body, it’s not possible ... We don’t hold ... judicial complaints tribunals in universities and we shouldn’t”. Still others stated: “we are not qualified to make any decisions on who’s guilty” and “the American ‘inquisition model’ runs ‘completely contrary to the Australian concepts [sic] of procedural fairness”. These statements are incorrect given ANU’s own disciplinary rules that clearly allow for decision-making and penalties for student misconduct, including sexual assault.

EROC Australia is aware of many other examples where universities did not understand university policy or were untrained in administrative decision-making when they did carry it out. Indeed it appears that many universities are not compliant with Australian best practice guidelines for university complaints handling which recommend that universities establish centralised complaints handling centres.⁹⁰ These guidelines also state that any staff who investigate complaints should have training that covers at least basic principles including procedural fairness, standards of proof, assessing conflicts of interests, assessing the risk of reprisals on complainants, and providing reasons for decisions.⁹¹

(k) Inadequate communication with the survivor during the investigation process

Throughout the process of a report being investigated and an outcome being decided, survivors are rarely provided with clear information about how their complaint is progressing, when and how they can expect to receive updates and information about their complaint, and who is managing their complaint. There is also often an asymmetry regarding communication rights. For example, we are aware of some universities that have taken significant periods of time to respond to survivors or to initiate action regarding a report, but then require survivors to respond or lodge appeals or grievances in very short times frames.

A lack of transparency in complaints handling procedures can cause significant anxiety and distress for survivors. One survivor who went through the official reporting process in 2014-2015 states the following:

My experience of the reporting process was terrible. It took up to nine months to conclude. There was little or no communication. I would go weeks without [receiving a] response from student services. Their process wasn't clear and there was no clear time line. Actions were promised and then taken back. ... I was never told the outcome of the case but simply sent a letter telling me it had concluded. I tried for months after to get an answer but eventually gave up.⁹²

Universities who do not give survivors regular updates on the progression of their complaint are in violation with Ombudsman Best Practice Guidelines, which state that “Complainants should normally be advised as and when each step is completed. ... it is generally unwise to leave too long a time between updates. If standard timeframes are exceeded, advice should be provided about such delays.”⁹³

⁹⁰ NSW Ombudsman, *Complaint Handling at Universities: Australasian Best Practice Guidelines* (2015), p.11.

⁹¹ NSW Ombudsman, *Complaint Handling at Universities: Australasian Best Practice Guidelines* (2015), pp.10-11.

⁹²Funnell, N. (2016). *The shocking way sexual violence is handled at Australian universities*. [online] news.com.au. Available at: www.news.com.au/lifestyle/real-life/news-life/the-shocking-way-sexual-violence-is-handled-at-australian-universities/news-story/fdb2f5d827ee8f6f4c124af11847aa25 [Accessed 29 Jun. 2016].

⁹³ NSW Ombudsman, *Complaint Handling at Universities: Australasian Best Practice Guidelines* (2015), p.27

In addition to this, it is common for the entire process to take excessively long periods of time, leaving the survivor in a prolonged state of stress and uncertainty, and potentially leaving safety issues unresolved for significant periods.

(I) A lack of protection for survivors after making reports to the university

Some student survivors note that they do not feel safe at university once they have made a report to the university, particularly during the investigation phase. Lack of safety may result from fear of seeing the perpetrator on campus, particularly if the survivor attends classes with the perpetrator or lives in the same university residence as them. For example, in Case Study Three (above, pg. 12), the survivor was too afraid of the risks of encountering the perpetrator on campus to attend on-campus counselling appointments, go to classes or sit her exams. Such fears can result in survivors withdrawing complaints, dropping out of courses or dropping out of the university altogether.

In such cases, it is common for universities not to do anything to ensure the survivor's safety on campus, or simply to tell the survivor that they are the one who must change their behaviour in order to remain safe, while the perpetrator is able to continue their normal behaviour on campus. For example, in Case Study Four (above, pg. 12) the survivor was too fearful to attend his classes, including one class that the perpetrator also attended. Rather than addressing the movements or actions of the alleged perpetrator, the university gave the survivor a safety plan that told him to "select a different pathway" if he saw the perpetrator on campus. This lack of protection places survivors at a heightened risk of ongoing physical and psychological harm. It demonstrates the need for universities to create and use mechanisms by which alleged perpetrators can be excluded from certain or all premises of the university, and/or from classes, on an interim basis while a formal complaints process is ongoing. For example, an alleged perpetrator could be temporarily excluded from a residence where the survivor lives pending a final decision about the complaint. Like bail conditions in criminal law, such mechanisms could be initiated without a full investigation taking place and be engaged where deemed necessary to protect the survivor and/or other students.

It is also common for survivors to face harassment from students other than the perpetrator, such as friends of the perpetrator. EROC Australia was told by one survivor:

I experienced a lot of harassment and bullying from some students after the case became public. I received no support from the uni and when I reported these incidents I was told there was nothing to be done and I should avoid places where they may be. Other times I received no response at all (personal communication, August 2016).

It is essential that universities act proactively to ensure that survivors feel safe on campus following a formal report. If stories of survivors being harassed and bullied after making a report become known within university communities, this is likely to deter others from reporting, and hence seriously jeopardise the efficacy of university complaints mechanisms and the ability of the university to protect its students. Where survivors face reprisals after making a formal report, it is appropriate for disciplinary action to be initiated against those who carried out the reprisals.

(m) Not informing the survivor of the outcome of the complaint

EROC Australia is aware of numerous occasions where survivors who have made a formal report of sexual assault to their university have either never been notified of the outcome, or have been explicitly told that they do not have the right to know the outcome because this would violate the privacy of the perpetrator. This leaves survivors without a sense of resolution, undermining many of the reasons that a complaints procedure is necessary in the first place. They may also feel that the university prioritises the perpetrator's rights over their own, even if the university does not believe this to be the case.

This is a blatant breach of the survivor's right to procedural fairness and prevents survivors from exercising their rights to internal and external appeals. Indeed, the NSW Ombudsman's best practice guidelines for complaint handling at universities states that the complainant must be furnished with more than just "a bald statement of a not sustained/sustained outcome" but must be given a "statement of the reasons for the complaint determination that is sufficiently detailed to permit an assessment of its validity and the viability of pursuing any available avenue of appeal".⁹⁴

In addition, universities that do not provide students who have made a formal complaint with a written statement of the outcome of their complaint and reasons for the decision are in breach of mandatory national standards for tertiary education providers, as well as mandatory national standards for providers of education to international students.⁹⁵ Under federal legislation, universities who do not comply with these standards are not capable of being registered to provide education to international students,⁹⁶ or of being registered to provide tertiary education at all.⁹⁷

(n) Inappropriate outcomes and lenient punishments

While most sexual assault survivors who have made formal complaints say they did not learn the outcome of the investigation, an FOI investigation into university records of complaints has shown that punishments are very lenient. Between 2011 and 2016, 575 formal complaints of sexual harassment or assault were reported across 27 universities. Of these, 145 cases related to rape specifically, however only 6 expulsions resulted. Other punishments handed down by universities or colleges for sexual offenses included:

- A \$55 fine for a male student who admitted to sexual misconduct;
- Eight hours of community service was assigned to a male student who admitted to multiple sexual offences;
- Being required to write an apology letter; and
- Being moved to a different residential hall on the other side of campus.⁹⁸

EROC Australia is aware of a number of perpetrators - both university staff and students - whose official sanctions for sexual misconduct and/or sexual violence have been a 'formal warning' or 'note on file'. Lenient sanctions such as these undermine the serious nature of incidents of sexual misconduct and sexual

⁹⁴ NSW Ombudsman, *Complaint Handling at Universities: Australasian Best Practice Guidelines* (2015), 28.

⁹⁵ *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007*, Standard 8.1(d); *Higher Education Standards Framework (Threshold Standards) 2015*, 2.4.4.

⁹⁶ *Education Services for Overseas Students Act 2000* (Cth) s 11(b)(ii).

⁹⁷ *Tertiary Education Quality and Standards Agency Act 2011* (Cth) s 21(1).

⁹⁸ Funnell, N. (2016). *Largest ever FOI request paints a dirty picture of sexual assault at Australian unis*. [online] news.com.au. Available at: www.news.com.au/lifestyle/real-life/news-life/largest-ever-foi-request-paints-a-dirty-picture-of-sexual-assault-at-australian-unis/news-story/798508bfcc3a6b2a684c5dcb9ed67fb3 [Accessed 7 Oct. 2016].

violence and will not deter perpetrators from offending again, leaving other students in the university community unsafe. EROC Australia also notes that a key message of the Universities Australia *Respect.Now.Always* is that Australia's 39 universities have "zero tolerance" for sexual assault and harassment⁹⁹. The inappropriate outcomes and lenient sanctions handed down to perpetrators, however, do not reflect this stance.

(o) The cycle continues

Through EROC Australia's work in supporting survivors of sexual assault, it is clear that across the board, institutional mechanisms for reporting sexual assault fail to provide trauma-informed support for sexual assault survivors and to deliver outcomes that meet the needs of survivors. This has created a climate in which students do not feel safe to report their experiences to their university or feel that to do so is a futile waste of energy. The poor outcomes delivered by reporting systems become known amongst student communities and anecdotal evidence about the inefficacy of these systems is shared. These informal communication networks between survivors are one of the few trusted sources of information that exist for many survivors, and when individuals who have gone through the process actively discourage others from doing so, this carries significant weight.

The result of this is that fewer and fewer survivors are likely to utilise formal mechanisms to report their experiences of sexual assault, and are more likely to rely on informal support systems, disclosing instead to friends, student representatives or academic staff. These individuals may also discourage formal reporting. Anna Hush, 2016 Women's Officer, notes that she "did not feel confident encouraging survivors to engage in a reporting system that was re-traumatising, protracted and alienating. Indeed, some of the survivors that came to me for assistance knew how broken the reporting system was and were seeking alternative pathways." (personal communication, December 2016)

Until reporting pathways and outcomes are significantly improved reporting rates are likely to remain low. This can create the false impression that sexual assault at university is not a significant concern. In turn, these artificially low report rates continue the cycle of silence by contributing to communities and a culture in which sexual assault is treated with secrecy and shame.

⁹⁹ Universities Australia (2016) *Respect.Now.Always* [online] Available at: <https://www.universitiesaustralia.edu.au/uni-participation-quality/students/Student-safety> [Accessed 1 Nov 2016]

6. Recommendations for changes at university level

There is an urgent need for Australian universities to evaluate and reinvent their approaches to sexual assault and harassment. Universities should be committed to creating learning environments that genuinely have zero tolerance for sexual violence, and where the rights and voices of survivors are placed at the centre of policy and practice. Universities' approach to sexual assault and harassment must be underpinned by a gender analysis which includes a comprehensive understanding of the causes, nature and consequences of sexual violence, the nature of rape culture within university communities, and the ways survivors of sexual assault can be blamed and silenced by institutional responses to sexual violence.

(a) Implement evidence-based education campaigns

Universities have a duty to provide safe learning and working environments for staff and students, and therefore have a duty to address issues of sexual assault and harassment within their communities.

EROC Australia recommends that:

1. Australian universities remove any 'safety tips' from their websites that place blame on victims or perpetuate rape myths.
2. Australian universities implement evidence-based education campaigns about sexual assault and consent, such as *The Full Stop Foundation's "Sex, Safety & Respect"* program which has been developed specifically for university staff and students.

(b) Provide training for staff and student leaders on responding to disclosures of sexual assault and harassment

EROC Australia recommends that:

3. Australian universities ensure that relevant staff receive training from an organisation with expertise in sexual assault on responding to disclosures of sexual assault and harassment. Specifically, we recommend that Australian universities participate in the *Full Stop Foundation's "Sex, Safety & Respect"* training program, including the "Educators Sex & Ethics Program (Train the Trainer)" for university staff members, and the "Sex, Ethics & Sexual Violence Prevention Program" for student leaders.
4. Australian universities should provide additional training to staff with responsibility for receiving disclosures or reports, managing complaints processes, investigating complaints or making decisions about complaints. This should include training about the university's policies and procedures, skills appropriate to the person's role, and training about sexual assault and rape myths, such as the *Full Stop Foundation's "Educators Sex & Ethics Program"*.

(c) Improve support services for survivors

As documented above, the support services available to survivors at most universities are inadequate. Providing dedicated support services for student survivors is integral to ensuring their wellbeing and to ensuring that they can continue to participate in their education.

As one part of achieving this goal, EROC Australia submits that universities should create sexual assault support centres, or designated sexual assault support staff who have expertise and training in sexual assault and complex trauma. This would create a clear point of contact within the university for survivors, which would ensure survivors are given accurate and complete information and would increase reporting. Such services are already provided at some universities outside Australia. For example, the University of Alberta's Sexual Assault Centre has a dedicated on-site psychologist who provides trauma counselling, and has staff who can advocate for special consideration in assessments, accompany survivors seeking medical attention or reporting their sexual assault, and make referrals to other support services.¹⁰⁰

EROC Australia recommends that:

5. The number of counsellors at university counselling services be increased in order to ensure survivors are able to access counselling in a timely manner;
6. All counsellors at university counselling services be given ongoing training from a specialist sexual assault service on counselling survivors of sexual assault;
7. Each Australian university hires designated counsellors with expertise and experience in sexual assault and complex trauma counselling;
8. Australian universities create sexual assault support centres to provide holistic support to student survivors, including:
 - assisting survivors to access appropriate and timely counselling, for example by helping them to bypass wait times at university counselling services;
 - assisting survivors to access appropriate services including medical or legal assistance, and providing support and accompaniment in making police reports;
 - assisting survivors facing housing difficulties;
 - assisting survivors facing financial difficulty as a result of their assault, for example by providing information about getting HECS debts waived;
 - providing accurate information about the survivor's rights at the university, and about formal reporting processes;
 - assisting survivors in making official reports to the university, and advocating for the survivor within these processes, for example by assisting to write complaints or appeals, and advocating for the survivor when university officials do not follow their own policies or otherwise respond inappropriately; and
 - helping survivors access special consideration and academic help without having to go through unnecessarily bureaucratic mechanisms.

¹⁰⁰ University of Alberta (n.d) Sexual Assault Centre [online] Available at: <https://www.ualberta.ca/current-students/sexual-assault-centre>

(d) Create and implement policies and procedures that are survivor-centric

As demonstrated above, sexual assault and harassment policies and procedures at Australian universities are generally not survivor-centric. Creating survivor-centric policies and procedures means developing documents that are trauma-informed and hence provide information in an accessible manner that does not victim-blame or create additional barriers to reporting. Survivor-centric policies would demonstrate to a survivor reading them that the university understands the traumatic nature of sexual assault, and takes it seriously to the extent that they will provide actionable outcomes if the survivor makes a disclosure or report, including holding the perpetrator accountable.¹⁰¹ Survivor-centric policies would ensure that the survivor is afforded confidentiality and has control over the process. They would provide comprehensive information about what steps will be taken if a survivor makes a disclosure or a report, thus ensuring the survivor can make an informed decision about whether to disclose or report.

EROC Australia recommends that:

9. Australian universities create policies and procedures that directly and separately address sexual assault and harassment as distinct issues.
10. Sexual assault and harassment policies and procedures be written in easy to understand language.
11. Australian universities ensure that their sexual assault and harassment policies and procedures include the following:
 - a. Behavioural definitions of sexual assault and harassment.
 - b. A clear distinction between making a disclosure and making a report. Making a disclosure should be defined as disclosing an incident to a staff member without initiating formal complaint procedures. This may, for example, be done in order to seek support, special consideration or so that the incident is recorded in university data. Making a report should be defined as making a formal report about an incident in order to initiate formal complaint or disciplinary procedures. There should also be a requirement that staff members who receive a disclosure or report brief the survivor on this distinction.
 - c. Clear information about how a survivor can make a disclosure or report,¹⁰² including:
 - i. The name, contact details and role of staff members that the survivor may make a face-to-face disclosure or report to.
 - ii. Information on, and links to, an online portal through which survivors can make a disclosure or report in writing. This should include information about who will read the written disclosure or report, and when the survivor can expect to receive a response.

¹⁰¹ In *Complaint Handling at Universities: Australasian Best Practice Guidelines* (2015), the NSW Ombudsman' states at p34 that one of the pre-conditions for people making complaints is that "They must believe that making a complaint will serve some good purpose - that appropriate action will be taken".

¹⁰² In *Complaint Handling at Universities: Australasian Best Practice Guidelines* (2015), the NSW Ombudsman' states at p8 that "how and where a complaint can be submitted" is "essential information about the complaint system" that must be "clearly conveyed". It is also noted at p14 that there should be a range of options for making a complaint, including face-to-face and through a complaint form.

- iii. A right to make a disclosure anonymously. This allows the university to gather data about sexual assault and overall trends at the university, while protecting anonymity for survivors who do not wish to be identified.¹⁰³
- d. A requirement that once a survivor makes a disclosure or report, they are given the name and contact details of one contact person who can provide them with information and updates throughout the process.¹⁰⁴ This will help to ensure clear communication between the university and the survivor, and ensure the survivor does not have to re-tell their story to multiple people as the process continues.
- e. A requirement that once a survivor makes a disclosure or report, they are provided with thorough information about what the different procedures are within the university, how they can access these options, and what possible outcomes for different procedures are.¹⁰⁵
- f. Information about how the survivor's confidentiality will be protected at all stages of the disclosure or reporting process.
- g. Information about whether any staff members are required to report disclosures or reports to any other staff members at the university, for example if they are required to report the matter to their supervisor. If this is the case, the policy should require that the staff member not provide the survivor's name to any other person unless the survivor consents.
- h. A requirement that no reports to police will be made without the consent of the survivor, unless the staff member is a mandatory reporter. Information should be included about what staff are mandatory reporters and what their reporting requirements are.
- i. A procedure by which the university can take *interim action* to exclude an alleged perpetrator from premises prior to the outcome of a formal complaint/disciplinary process. This procedure should be available after a report is made and should be designed to protect the survivor and others from physical and psychological harm that may result from proximity with the alleged perpetrator. It should give relevant staff members the power to temporarily exclude alleged perpetrators from classes that the survivor attends, residences that the survivor lives at (regardless of whether the perpetrator also lives at the residence), and from the university altogether. The procedure should not require a formal decision-making process or a high standard of proof, but should be exercised when it appears likely that exclusion is necessary to ensure the survivor can continue their education and life at the university without re-traumatisation, or to otherwise protect the survivor or others from harm. The procedure should clearly state how a survivor can request that such action be taken, and should require that staff members who receive a disclosure or report explain this procedure to the survivor.
- j. A formal complaint/discipline procedure by which incidents can be investigated and disciplinary action can be taken against perpetrators. This procedure should:
 - i. Be designed in conjunction with survivors and experts in sexual assault and trauma to ensure the procedure reduces the risk of re-traumatisation for

¹⁰³ Some state and territory police forces have anonymous sexual assault reporting portals. See for example, NSW Police, *Adult Sexual Assault* www.police.nsw.gov.au/community_issues/adult_sexual_assault; South Eastern Centre Against Sexual Assault, *Sexual Assault Report Anonymously* (2015) www.sara.org.au/.

¹⁰⁴ This was recommended by NSW Ombudsman, *Complaint Handling at Universities: Australasian Best Practice Guidelines* (2015), p20.

¹⁰⁵ In *Complaint Handling at Universities: Australasian Best Practice Guidelines* (2015), the NSW Ombudsman at p16 emphasises the importance of the person receiving the complaint briefing the complainant on the complaint process, possible outcomes and timeframes.

- survivors. This is integral to encourage reporting and ensuring survivors can safely access the procedure.
- ii. Ensure that survivors are afforded procedural fairness throughout the process.
 - iii. Clearly state how a survivor can initiate disciplinary proceedings against a perpetrator, and should require that staff members who receive a disclosure or report explain this procedure to the survivor.
 - iv. Create a centre responsible for overseeing all formal complaint/discipline procedures undertaken. Such a centre could record data about complaints and monitor systemic issues, ensure all investigators and decision-makers are appropriately trained, appoint investigators and decision-makers, advise staff and students on the relevant processes, and monitor investigations to ensure they comply with procedure and are undertaken in a timely manner.¹⁰⁶
 - v. State how evidence will be gathered and by whom, for example by providing that internal or external investigators be appointed.
 - vi. Designate a decision-making body, for example the investigator or a separate entity or person.
 - vii. Require that all investigators and decision-makers receive appropriate training on an ongoing basis.¹⁰⁷ Training should cover the principles of investigation and decision-making, as well as training about sexual assault, trauma, and rape myths.
 - viii. Provide the relevant civil standard of proof.
 - ix. Provide what possible outcomes of the process are, including disciplinary action that can be taken against perpetrators such as expulsion from the university.
 - x. State that the survivor has a right to know the outcome of such a procedure, including what findings are made and what disciplinary action is taken against a perpetrator.
 - xi. State that the survivor has the right to be provided with written reasons for any outcome, including a decision not to investigate. Reasons must be sufficiently detailed to allow the survivor to decide whether to pursue an internal or external appeal.¹⁰⁸
 - xii. Include a formal procedure for appealing the outcome of such a procedure. The appeal must be conducted and decided by people other than those involved in the initial decision.¹⁰⁹
 - xiii. Include external appeal options that are available (e.g. to the relevant Ombudsman or the Australian Human Rights Commission).¹¹⁰

¹⁰⁶ Creating complaints centres at universities is recommended by the NSW Ombudsman, *Complaint Handling at Universities: Australasian Best Practice Guidelines* (2015), p11-12.

¹⁰⁷ In *Complaint Handling at Universities: Australasian Best Practice Guidelines* (2015), the NSW Ombudsman states that complaints handling staff, including investigators, must be provided with comprehensive training, including training on conflicts of interest, providing reasons for decisions, procedural fairness, standards of proof and the nature of administrative investigations. See pages 7 and 9-11.

¹⁰⁸ In *Complaint Handling at Universities: Australasian Best Practice Guidelines* (2015), the NSW Ombudsman states at p28 that the complainant must be furnished with more than just “a bald statement of a not sustained/sustained outcome” but must be given a “statement of the reasons for the complaint determination that is sufficiently detailed to permit an assessment of its validity and the viability of pursuing any available avenue of appeal”.

¹⁰⁹ In *Complaint Handling at Universities: Australasian Best Practice Guidelines* (2015), the NSW Ombudsman states at p30 that there should be at least one method of internal review and that procedural fairness requires it to be conducted by a different person.

¹¹⁰ In *Complaint Handling at Universities: Australasian Best Practice Guidelines* (2015), the NSW Ombudsman states at p30 that the complainant must be informed of their options for external review.

- k. An explanation of how the survivor will be kept informed about her/his disclosure or report.
 - l. Time limits for university staff in each step in the process, including how long a formal disciplinary process will take.¹¹¹
 - m. A clear procedure by which a survivor can complain if they are unhappy with how their disclosure or report is being dealt with.¹¹²
 - n. A statement that the survivor can withdraw their report at any time.
 - o. A statement that the survivor may have a support person accompany them to any meetings regarding their disclosure or report, including disciplinary proceedings.
 - p. Links to other relevant policies and procedures, including special consideration policies.
 - q. Referrals to relevant internal and external support services, including counselling, medical and legal services.
12. Sexual assault and harassment policies and procedures should *not* include any of the following:
 - a. Any time limit on reporting sexual assault or harassment to the university.
 - b. Any requirement or suggestion that survivors should informally resolve incidents of sexual assault or harassment with the perpetrator.
 - c. Any requirement for survivors to make a police report, or any statement that the university cannot act unless or if a police report is made.
 - d. Any requirement for the university or staff members to make a police report without the consent of the survivor, unless there are serious concerns for safety unless they are a mandatory reporter.
 13. Australian universities create web pages for student survivors that clearly provide all the above information.¹¹³
 14. Australian universities also use other methods to disseminate this information including by incorporating it into training or other material for new students, and incorporating it into pamphlets available across campus.¹¹⁴
 15. Sexual assault and harassment policies and procedures are translated into languages other than English that are spoken by significant proportions of the student population. Survivors who need an interpreter to communicate effectively with staff should be provided one by the university.¹¹⁵
 16. Sexual assault and harassment policies and procedures are published in formats that make them accessible for people with disabilities. Survivors who need a sign language interpreter or other intermediary to communicate effectively with staff should be provided one by the university.

¹¹¹ In *Complaint Handling at Universities: Australasian Best Practice Guidelines* (2015), the NSW Ombudsman states that “the university’s timeliness standards for handling complaints” is “essential information about the complaint system” that must be “clearly conveyed”.

¹¹² In *Complaint Handling at Universities: Australasian Best Practice Guidelines* (2015), the NSW Ombudsman’ states at p8 that “the options available if a person is dissatisfied with how their complaint was handled or the outcome” is “essential information about the complaint system” that must be “clearly conveyed”.

¹¹³ In *Complaint Handling at Universities: Australasian Best Practice Guidelines* (2015), the NSW Ombudsman’ states at p7: “It is fundamental to the effective operation of any complaint handling system that there is widespread knowledge of the system and ready access to comprehensive information about the system and its processes ... In a modern university environment, this means up-to-date information should be available on the university website with ample, user friendly, cross-reference links. The website could also have appropriate flow charts to summarise the course an individual complaint might take”.

¹¹⁴ NSW Ombudsman, *Complaint Handling at Universities: Australasian Best Practice Guidelines* (2015), 8.

¹¹⁵ Ibid.

(e) Maintain effective records

It is essential that universities are committed to keeping effective records of disclosures and reports of sexual assault and harassment, as well as action taken regarding those disclosures and reports. Record keeping is essential for universities to be able to:

- Identify systemic issues at the university or in particular areas of the university,
- Monitor the extent and nature of sexual assault and harassment at the university,
- Monitor whether complaints procedures are effective, and
- Monitor whether policy changes designed to increase reporting or improve complaints procedures have been successful.

In its best practice guidelines for complaint handling at universities the NSW Ombudsman recommends that universities maintain a complaints database.¹¹⁶ The Ombudsman notes that complaints often raise issues about systemic problems within the university, and keeping good records can help the university 'identify, assess and manage risks'.¹¹⁷ Given this, it recommends that universities collect data on many issues, including the number of complaints, how the complaints have been handled, and what strategies were implemented to limit recurrences.¹¹⁸

This is particularly important when it comes to sexual assault or harassment. University data on disclosures and complaints may, for example, show high levels of sexual assault and harassment across the entire university, or in particular residences or faculties. It may also demonstrate systemic problems in how disclosures and reports are dealt with, for example if complaints are taking too long to be resolved or if survivors are dropping out of the process due to lack of support or information.

EROC Australia recommends that:

17. Australian universities maintain thorough records about disclosures and reports of sexual assault and harassment, and how those disclosures and reports were dealt with. Records should include:
 - a. De-identified details of the incident;
 - b. How long the process took between the disclosure or report and final outcome;
 - c. If the university or the survivor chose to discontinue the process, why they chose to do this;
 - d. What disciplinary action was taken against the perpetrator(s);
 - e. If no disciplinary action was taken, why this was the case;
 - f. What action was taken following the disclosure or report to prevent similar incidents recurring in the future; and
 - g. Whether there were any issues raised about how the disclosure or report was dealt with.
18. Australian universities make de-identified statistics about sexual assault and harassment publicly available on their websites.

¹¹⁶ NSW Ombudsman, *Complaint Handling at Universities: Australasian Best Practice Guidelines* (2015),12.

¹¹⁷ Ibid.

¹¹⁸Ibid.

(f) Improve oversight of student residences

EROC Australia recommends that:

19. Australian universities require that any residences owned by the university comply with university policies and procedures regarding sexual assault and harassment, rather than using their own ad hoc procedures.
20. Where the legal relationship between a privately-owned residence and a university allows, the university should require that:
 - a. Disclosures or reports of sexual assault made to staff at the residence are reported to the university administration. Such reports must be de-identified unless survivors consent to their name being included.
 - b. The residence complies with university policies and procedures regarding sexual assault and harassment rather than using their own.
21. Where the legal relationship between a privately-owned residence and the university does not allow the university to place requirements on the residence, the university should actively encourage it to comply with the above requirements regardless. Where such a residence does not comply with university policies and procedures regarding sexual assault and harassment, the university should work with the residence as far as possible to ensure its policies and procedures are consistent with university policies and procedures.

7. Recommendations for other changes

(a) *Establish a federal complaints mechanism*

EROC Australia submits that the Australian government should establish a federal complaints mechanism that allows survivors to make complaints about their universities that can then be investigated and sanctioned.

Such a mechanism exists in the United States in the form of *Title IX* which prohibits sex discrimination, including sexual assault and harassment, in education.¹¹⁹ *Title IX* operates from the principle that sexual assault and harassment at universities create 'hostile environments' and '[interfere] with or [limit] a student's ability to participate in or benefit from the school's program'.¹²⁰ American universities are therefore legally required to promptly and impartially investigate reports of sexual assault and harassment and take appropriate action.¹²¹ If the conduct is found to have occurred and created a 'hostile environment', the university must 'take immediate action to eliminate the hostile environment, prevent its recurrence and address its effects'.¹²² The Office of Civil Rights (OCR) states that this may include taking disciplinary action against the perpetrator, ensuring the survivor and perpetrator do not attend the same classes, and making changes to the university's policies.¹²³

Importantly, *Title IX* also provides individual survivors with a mechanism to make complaints to the OCR if their university does not comply with *Title IX* requirements.¹²⁴ Complaints are free to make and survivors do not need legal representation. Complaints are investigated by the OCR and decisions are published. If a breach is found to have occurred, the OCR may withdraw the university's funding or may enter into resolution agreements whereby the university agrees to implement certain changes to prevent recurrences of the problem.¹²⁵

While Australia has some legislation that is similar to *Title IX*, none provides an appropriate mechanism for survivors to make individual complaints against universities, or a mechanism through which universities can be publicly investigated and sanctioned if they do not respond appropriately or instigate reform. The *Sex Discrimination Act 1984* (Cth) makes sexual harassment in educational institutions unlawful,¹²⁶ however it does not appear that universities can be held liable for student-on-student harassment.¹²⁷

The *Higher Education Standards Framework (Threshold Standards) 2015* (Cth) ('the *Threshold Standards*') and the *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007* ('the *National Code*') are similar to *Title IX* in some respects.

Requirements of the *Threshold Standards* include:

¹¹⁹ *Title IX of the Education Amendments* 20 USCA § 1681 (1972).

¹²⁰ Russlyn Ali, 'Dear Colleague Letter' (Significant Guidance Letter, Office for Civil Rights, 2011) 3.

¹²¹ *Ibid.* p. 3-5

¹²² *Ibid.*, p.15.

¹²³ *Ibid.*, pp.15-17.

¹²⁴ See Know Your IX, *Title IX in Detail*, Available at: knowyourix.org/title-ix/title-ix-in-detail/.

¹²⁵ See Office for Civil Rights, *Case Resolutions Regarding Sex Discrimination*, U.S. Department of Education, <https://www2.ed.gov/about/offices/list/ocr/frontpage/casesolutions/sex-cr.html>.

¹²⁶ *Sex Discrimination Act 1984* (Cth) s 28F.

¹²⁷ See, for example, *Huang v UNSW & Ors* [2005] FMCA 463, [20]-[21]; *Shammas v Canberra Institute of Technology* [2014] FCA 408, [29].

- ‘A safe environment is promoted and fostered’;¹²⁸
- ‘There are policies and processes that deliver timely resolution of formal complaints ... and these are applied consistently, fairly and without reprisal’;¹²⁹
- ‘Institutional complaints-handling and appeals processes for formal complaints include provision for confidentiality, independent professional advice, advocacy and other support for the complainant or appellant’.¹³⁰
- ‘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.’¹³¹

If providers do not comply with the *Threshold Standards*, they may have their registration as a higher education provider cancelled and then will lose federal funding.¹³² Students can make complaints to the Tertiary Education and Quality Standards Agency (TEQSA) if they believe their university has not complied with the *Threshold Standards*. However, TEQSA does not investigate and determine individual complaints, but rather keeps complaints and considers them when it next conducts its regular assessment of the relevant university.¹³³ TEQSA’s confidentiality requirements prevent it from advising the complainant of any regulatory action taken in relation to a complaint.¹³⁴

Higher education providers registered to accept international students must also comply with the *National Code*.¹³⁵ The *National Code* includes requirements about universities’ critical incident policies and complaints and appeal processes, including that complainants be given a written statement of outcomes of complaint procedures, and that the process must commence within 10 working days of the lodging a formal complaint.¹³⁶ TEQSA can enforce compliance with the *National Code* through suspending or cancelling registration,¹³⁷ imposing fines,¹³⁸ or creating enforceable undertakings whereby universities agree to take, or refrain from taking, specified action.¹³⁹ There does not appear to be a mechanism for students to make complaints against universities that have breached the *National Code*, except through complaining to an Ombudsman.

EROC Australia is not aware of any survivors who have made complaints under either of these mechanisms. EROC Australia submits that if universities are to be held accountable for their inadequate responses to sexual violence, a more robust external enforcement mechanism is needed. We submit that such a mechanism should allow student survivors to make complaints, as these are the people with direct knowledge of the problems at their university. The ability to make complaints to ombudsmen is insufficient given the unenforceable nature of ombudsmen recommendations, and their inability to issue sanctions for noncompliance.

¹²⁸ *Higher Education Standards Framework (Threshold Standards) 2015* (Cth), standard 2.3.4.

¹²⁹ *Higher Education Standards Framework (Threshold Standards) 2015* (Cth), standard 2.4.2.

¹³⁰ *Higher Education Standards Framework (Threshold Standards) 2015* (Cth), standard 2.4.3.

¹³¹ *Higher Education Standards Framework (Threshold Standards) 2015* (Cth), standard 2.4.4.

¹³² *Tertiary Education Quality and Standards Agency Act 2011* (Cth) ss 98, 101.

¹³³ Tertiary Education Quality and Standards Agency, *Complaints*, www.teqsa.gov.au/complaints.

¹³⁴ *Ibid*

¹³⁵ *Education Services for Overseas Students Act 2000* (Cth) ss 8, 11(b).

¹³⁶ *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007* (Cth), standards 6 and 8

¹³⁷ *Education Services for Overseas Students Act 2000* (Cth) s 83

¹³⁸ *Education Services for Overseas Students Act 2000* (Cth) s 44.

¹³⁹ *Education Services for Overseas Students Act 2000* (Cth) ss 110A-110B.

EROC Australia recommends that:

22. National standards be created that specify how universities must respond to sexual assault and harassment, including requirements for relevant policies and procedures, training and support services. These standards should be modelled off EROC Australia's recommendations above.
23. A federal agency such as the Tertiary Education and Quality Standards Agency or the Australian Human Rights Commission be given the power to investigate universities for compliance with these standards. The federal agency should also be given power to sanction universities who fail to comply with the standards, including through withdrawing funding, issuing fines, and compelling universities to comply with recommendations.
24. A simple mechanism be created whereby individuals can complain to the federal agency about inappropriate university responses to sexual assault and harassment. It should be free to make a complaint and individuals should not need legal representation to do so. Complaints from individuals should trigger an investigation of the allegation, a decision about whether the allegation is founded, and a decision as to what sanctions should be placed on the university, including recommendations for changes to the university's policy. Such decisions should be made public and provided to the complainant.
25. Information about the complaints mechanism and how to file a complaint should be made readily available to students.

(b) Implement education about consent and sexual assault at a secondary education level.

While prevention education at a tertiary educational level is important, there is significant evidence that the attitudes enabling sexual assault to occur are formed at a young age. To implement effective primary prevention programs and stop sexual violence before it occurs, we need to intervene before these attitudes are formed and provide young people with quality information about consent and sexual assault. The National Curriculum *Health and Physical Education Focus Areas* document makes only one reference to consent:

"Students will learn about ... practices that support reproductive and sexual health [contraception, negotiating consent, and prevention of sexually transmitted infections and blood-borne viruses]".¹⁴⁰

The Australian Curriculum Assessment and Reporting Authority website provides no further information on the model of consent provided to students or the teaching resources for educators. Indeed, a survey on sex education in Australian schools conducted at La Trobe University found that two thirds of teachers reported requiring further assistance with teaching students about sexual abuse.¹⁴¹ By developing high quality, evidence-based teaching materials about the nature of sexual violence and negotiating consent, and providing secondary students with this information from a young age, we can intervene in the formation of negative attitudes about sex and gender that enable broader societal patterns of sexual violence.

¹⁴⁰ Australian Curriculum Assessment and Reporting Authority, *Health and Physical Education curriculum focus areas* (2015).

¹⁴¹ Australian Research Centre in Sex, Health and Society, La Trobe University, *Sexuality Education in Australian Secondary Schools* (2010).

EROC Australia recommends that:

26. Comprehensive modules about consent and sexual assault be added to the National Curriculum.
27. Teachers be given access to teaching materials about consent and sexual assault developed by an organisation with expertise in sexual assault.

(c) Ensure ongoing funding to support services in the wider community

It is important to recognise that survivors of sexual assault at universities also commonly utilise support services outside their university. Specialist medical services such as forensic testing are mostly located at hospitals, rather than on campus. In cases where on-campus services cannot adequately provide for their needs, for example when there is no specialist trauma counselling, survivors will turn to off-campus services. Survivors also have long-term needs that continue to exist after they leave university. Some survivors will require counselling, financial support or legal assistance years after their assault. For these reasons, it is crucial to ensure that high quality, trauma-informed and accessible services exist in the broader community. However, many such services are currently experiencing cuts to their funding and face a precarious existence in the future.¹⁴² In June 2016, 1800 Respect moved to a triage model co-contracted with Medibank Health Solutions, meaning that calls were no longer answered directly by an experienced and trained trauma counsellor.¹⁴³ Many callers are directed to state-based services or online counselling instead of trauma specialists.¹⁴⁴ To ensure that trauma-informed counselling services are accessible to all survivors that require them, adequate funding from Federal and State Governments needs to be allocated to the organisations responsible for providing these services.

EROC Australia recommends that:

28. State and federal funding to support services for survivors is increased. This includes state and federal sexual assault counselling services, women's legal services, and sexual assault forensic units.
29. Organisations with specific expertise in sexual assault and trauma maintain control over these services.

(d) Future research

¹⁴² Scarr, L (2015) Women intimidated and hang up on calls to domestic violence hotline 1800Respect [online] *news.com.au*, Available at: www.news.com.au/national/women-intimidated-and-hang-up-on-calls-to-domestic-violence-hotline-1800respect/news-story/6702096952139580e90c019046c726c8 [Accessed 4 June 2015].

¹⁴³ Price, J. (2016) Domestic violence hotline 1800 RESPECT flooded with complaints after system changed", [online] *Sydney Morning Herald*, Available at: www.smh.com.au/lifestyle/news-and-views/news-features/domestic-violence-hotline-1800-respect-flooded-with-complaints-after-switch-to-triage-system-20161211-gt8oq9.html [Accessed :12 Dec 2016]

¹⁴⁴ Ibid.

EROC Australia acknowledges the hard work of the Australian Human Rights Commission in conducting the university sexual assault and harassment project, the first of its kind in Australia. We submit that it will be necessary to carry out similar research in the future to measure change in this area.

EROC Australia recommends that:

30. Follow up surveys and submission processes be conducted in the future to measure levels of sexual assault and harassment at universities, and survivors' satisfaction with universities' responses to sexual assault and harassment. In conducting such research, the following principles should be observed:
 - a. All survey and submission instruments should be designed by experts in sexual assault survey design. They should also be based on a literature review of national and international best practice on sexual assault survey design.
 - b. All survey and submission instruments should include behavioural definitions of sexual assault and harassment
 - c. Research should be carried out independently from universities and residential colleges.
 - d. The body conducting the research should be transparent about funding bodies and who has input into the design of the research instruments.
 - e. A copy of the survey instrument should be made publicly available.
 - f. Data sets for each individual university be released in addition to the overall data set. This should also be released for the data from the current survey.

8. Release of the Australian Human Rights Commission's final report

A number of student leaders have contacted EROC Australia to express concerns about the support needs of students following the release of the AHRC's final report. Students leaders have expressed concern that the report and surrounding media attention will be re-traumatising for some survivors, particularly those who made submissions to the project. There are particular concerns that Women's Officers, other student representatives and overburdened university counselling services will not be able to provide sufficient support to survivors, particularly if the final report is released during exam period, when stress is already increased. EROC Australia also believes that reading the final report may make survivors aware of avenues of redress they were previously unaware of, including internal and external complaints mechanisms and legal action. We are concerned that there is a lack of services that can assist survivors to access these services. We therefore submit that it is appropriate for support and advocacy services to be created for survivors affected by the release of the report.

EROC Australia recommends that:

31. Additional trauma specialist counsellors be hired to provide on-campus or telephone counselling to survivors affected by the released of the final AHRC report.
32. The AHRC or another service create a hotline that survivors can access in order to:
 - a. Seek advice about making disclosures or reports to their university, and accessing internal university complaints mechanisms;
 - b. Seek advice about making external complaints about how their university managed their disclosure or report, including advice on making complaints to TEQSA, ombudsmen and the AHRC; and
 - c. Get referrals to relevant services, including legal services.