

**Supplementary
Submission
No 28a**

**INQUIRY INTO FUTURE DEVELOPMENT OF THE NSW
TERTIARY EDUCATION SECTOR**

Organisation: Campus Justice

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CAMPUS JUSTICE

*A group of concerned lawyers and alumni
who believe courts, not universities,
must adjudicate sexual assault.*

Supplementary Submission

To	The NSW Legislative Council Inquiry into the future development of the NSW tertiary education sector
From	Campus Justice A group of concerned lawyers and alumni who believe courts not universities must adjudicate sexual assault Contact details: separately provided
Date	13 th August 2020

Failed regulation and oversight of NSW Tertiary Education

Correspondence with the universities over this issue has revealed that the current unsatisfactory system was established in response to a 2018 guidance note from TEQSA, advising universities to provide evidence about how they respond to sexual assault.

It is concerning to find this Federal university regulatory body has clearly fallen victim to an ideologically-driven view of universities being dominated by a “campus rape culture” and is framing its advice to the universities in response to feminist goals. The opening paragraph of TEQSA’s January 2019 report on this issue mentions approvingly an alarmist feminist movie called *The Hunting Ground*, which has been denounced by 19 Harvard law professors for promoting “unfair and misleading propaganda”.

Both the TEQSA 2018 document and resulting university regulations display the same bias, focusing entirely on providing proper care for alleged sexual assault victims with absolutely no mention of protecting legal rights of the accused — who are usually, of course, young men.

In July, 2020, TEQSA released a new 76 page “[Good Practice Note](#)” on preventing and responding to sexual assault and sexual harassment. This document, written by a group of authors who included two *End Rape on Campus* activists, fails to mention the Queensland Supreme Court case and the Education Minister’s advice to TEQSA informing the universities that they should leave sexual assault to the criminal justice system. Instead, the latest TEQSA practice note advises the universities that whilst they can’t conduct criminal investigations they can “deal with the matter under their own misconduct procedures,” providing advice about handling these investigations which neatly sidestep all the key contentious issues. There’s no mention of the fact that these misconduct procedures uniformly decide these serious matters using the lowest possible standard of proof, the “balance of probabilities.”

The university-imposed penalties for sexual assault are mentioned in this TEQSA document without any explanation of what laws permit universities to withhold degrees or suspend students from their studies. As Amanda Stoker pointed out to TEQSA bureaucrats in her Senate Estimates interrogation, sexual assault legislation does not include penalties which include robbing young men of degrees worth many thousands of dollars and long years of study. It's notable that TEQSA fails once again to address the legality of these penalties.

The latest TEQSA document makes a token effort to address another of the major concerns raised in Senate Estimates – the lack of due process rights for the accused. TEQSA now suggests that the nameless university administrators tasked with deciding the fate of accused students are now expected to receive appropriate training, provide evidence to the accused regarding the accusations, keep proper records and ensure their reports are procedurally fair.

But there's no discussion of the most glaring failure to provide basic rights for the accused – access to lawyers. On page 14, the TEQSA document cites Monash University regulations as a "best practice" example, which specifically preclude accused students from being represented by lawyers during their investigations. As mentioned previously, only two NSW universities allow accused students to be advised by lawyers during their investigations.

TEQSA's latest effort provides further evidence of the failure of the university regulator to properly advise the tertiary sector on this important issue.