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# **Inquiry into current and proposed sexual consent laws in Australia**

**End Rape on Campus Australia**

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## About End Rape on Campus Australia

End Rape on Campus Australia (EROC Australia) was founded in 2015 and is a not-for-profit organisation that works to end sexual violence at universities and residential colleges through direct support for survivors and their communities; prevention through education; and policy reform at the campus, state, and federal levels.

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The scale of sexual violence experienced by Australia's university students has been well established by two national surveys and accompanying reports – the Australian Human Rights Commission's 2017 *Change the Course* report and the 2022 Social Research Centre's *National Student Safety Survey* (NSSS) report. The NSSS revealed that the prevalence of sexual violence had remained unacceptably high, despite claims by the university sector that it has taken substantial steps to prevent violence occurring (see Appendix A).

It is EROC Australia's experience that sexual violence is not driven by deficiencies in consent literacy or inconsistencies in state and territory laws, but rather a lack of motivation to ensure that consent is present. This stems from inadequate relationship and sexuality education (RSE), both within education settings and general society more broadly. A lack of holistic RSE not only encourages the perpetration of sexual abuse, it also impacts societal responses to this abuse, including responses within the criminal justice and university systems as myths about sexual violence and victim-blaming attitudes have been allowed to take hold, affecting the outcomes of complaints in courtrooms and at a campus level.

In our experience, most students at Australian universities are able to give a broad definition of consent, taught to them during their primary and secondary schooling as part of "consent education" classes. They can articulate an understanding of affirmative consent and can demonstrate basic knowledge regarding criminal penalties that may be applied should sexual activity without consent occur. What is currently lacking among university student cohorts is an ability to recognise and understand the nuances and ambiguities that can occur during sexual activities, and the skills and knowledge to navigate those nuances and ambiguities in a way that safeguards all those involved.

In one workshop with domestic undergraduate students attended by EROC Australia, a male student participant was able to share a textbook definition of the consent laws in his state and of affirmative consent. He noted, however, that he and other young men in his peer group viewed a woman's refusal or reluctance to engage in sexual activity as a challenge. It was, in his words, "their job to turn the 'no' into a 'yes', whatever it takes". Other participants stated that they had either engaged in coercion tactics or had been the target of them, with the most common methods employed being plying someone with alcohol to "lower their defences" or pestering or intimidating someone until "they just gave in".

It is common for many of the student victim-survivors that EROC Australia supports to report that they were coerced into engaging in sexual activities, often after consenting to one act but not another, while too intoxicated to consent, or through what one student victim-survivor referred to as "being worn down by harassment and hoping it would mean they'd just leave me alone afterwards".

The experiences noted by the student victim-survivors supported by EROC Australia were mirrored in the *Change the Course* and *National Student Safety Survey* reports, with student



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testimonials highlighting the use of alcohol to facilitate assaults, harassing or intimidating behaviour to coerce someone into a sexual act or the deliberate ignoring of a refusal<sup>1</sup>.

“Consent education” alone will do little to address sexual violence within university communities, or the general population more broadly. As outlined above, the sexual violence experienced among university student cohorts is not the result of consent illiteracy, lack of motivation to ensure consent in sexual encounters. Furthermore, existing “consent education” programming across the university sector, most of which was instigated following the release of the *Change the Course* report in 2017, has proven ineffective at best and harmful at worst.

The results of the NSSS, released five years after *Change the Course*, showed an increase in sexual assault prevalence, in university communities despite the implementation of purported violence prevention efforts, including mandatory “consent education” modules, across the sector (see Appendix A). These modules typically take the form of online, one-off exercises, with different scenarios presented followed by a series of questions that participants must answer. Topics covered in the modules cover the law, supporting a friend who has been assaulted, and bystander intervention.

These modules have been the subject of ongoing criticism. Research has consistently proven that one-off programs are ineffective<sup>2</sup>, and experts have continued to raise concerns about universities implementing programs that have not been rigorously and systemically evaluated<sup>3</sup>. Students at the University of Sydney recently stated that their institution’s online consent module “fails to correctly address its audience, provide comprehensive content and employ methodology that optimises long-term memory retention, calling the module “condescending and unhelpful”<sup>4</sup>.

Additional critiques of these modules include the lack of alternative options for students who may be distressed by the content, such as students who have experienced sexual abuse. EROC Australia recently supported a student victim-survivor who was unable to complete her institution’s online module as she found the content too upsetting to engage with. Her university threatened her with sanctions due to the non-completion of the

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<sup>1</sup> Australian Human Rights Commission. "[Change the course: National report on sexual assault and sexual harassment at Australian universities.](#)" (2017), & Heywood, W., Myers, P., Powell, A., Meikle, G., & Nguyen, D. "[National Student Safety Survey: Report on the prevalence of sexual harassment and sexual assault among university students in 2021.](#)" The Social Research Centre (2022).

<sup>2</sup> Jewkes, R., & Stern, E. & Ramsoomar, L. "[Community activism approaches to shift harmful gender attitudes, roles and social norms: Evidence Review.](#)" (2019).

<sup>3</sup> Fileborn, B. "[Making sexual consent matter: one-off courses are unlikely to help.](#)" The Conversation, (2018), & <https://theconversation.com/making-sexual-consent-matter-one-off-courses-are-unlikely-to-help-91574> & Ison, J., Henry, N., & Loney-Howes, R. "[‘Change the Course’ set out to end sexual violence and harassment on campus. 5 years on, unis still have work to do.](#)" The Conversation, (2022).

<sup>4</sup> Haghghi, A. "[Why the University’s existing consent module fails students.](#)" Honi Soit, (2023).



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module, despite being aware that she had been assaulted by a fellow student the previous year.

EROC Australia has also supported several student victim-survivors from one university whose online module asks students to identify inappropriate and victim-blaming questions, such as “what were you wearing?” and “were you drunk?”. These students were particularly distressed by the content in the module as they had been asked these questions by university staff when reporting the assaults they had been subjected to. The students notified the university that they were unable to complete the module as they found that it was compounding their existing trauma due to the questions they had been asked by university staff but were ultimately required to complete it if they wanted to avoid academic sanctions.

The NSSS revealed that despite most institutions requiring students to complete an online consent module, many students believe that their university is not doing enough to educate students or staff about the issue of sexual violence (see Appendix A). Students noted that existing content lacks nuance and advice for LGBTQIA+ students and fails to address violence that occurs within relationships. Student testimonies stated that “online consent modules depict sex as so cartoonish that men dismiss any lesson they could learn from them”. Another student noted that their university’s module “mainly just covers if they don’t explicitly say ‘yes; to sex, then it’s rape”, while another stated “there needs to be more awareness... awareness that digs down to the reality of gender-based violence and actively works to dispel prejudices, biases and misconceptions”<sup>5</sup>.

It's our experience that sexual abuse within university contexts is not only perpetrated by students, but also by university staff. As is the case with student offenders, this abuse is not driven by an inadequate understanding of consent, but by a lack of care about whether or not consent is present.

We understand that some university staff are only required to undertake the same ineffective one-off online “consent education” modules that are required of students, while others are not required to undertake any education regarding sexual abuse at all. This lack of adequate RSE among university staff is reflected in university complaints processes, where staff responsible for taking or investigating reports often engage in the use of rape myths and/or victim-blaming responses.

EROC Australia’s experiences regarding university staff have been reflected in both the *Change the Course* and NSSS reports, which identified university staff as common perpetrators of sexual abuse against students. Student testimonies also reflect the need for RSE for university staff, with misconceptions about sexual assault and consent, victim-

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<sup>5</sup> Nisbet, L., Halse, G., van Esbroek, E., Heywood, W., Powell, A. & Myers, P. “[National Student Safety Survey: Qualitative research on experiences of sexual harassment and sexual assault among university students in 2021](#).” The Social Research Centre (2022).



blaming and dismissive attitudes being highlighted as issues for students who attempted to report abuse to their institution.

EROC Australia notes that there are benefits to the harmonisation of consent laws across Australia but believes that progress to prevent sexual violence will be minimal without significant investment in expert-designed and led prevention education programs that are evidence based and subject to rigorous monitoring and evaluation processes.

Prevention education programs must go beyond “consent education”. What’s required – both within the education sector and Australian society more broadly – is holistic relationship and sexuality education programs that are applicable to diverse experiences and cover more than what the law says is the minimum requirement for consent. While it’s important that the legal definitions of sexual assault and consent are covered, prevention education programs will continue to be ineffective if they do not also cover topics such as sexual ethics and sexual pleasure, the gendered nature of sexual violence, the root causes of gender inequality, rape myths and bystander intervention. These programs must be trauma-informed and they must account for the experiences of members of the LGBTQIA+ community, people with disabilities, Aboriginal and Torres Strait Islander people and people from culturally and linguistically diverse communities.

Similarly, prevention education will continue to be inadequate if it is limited to primary and secondary education settings alone. It will continue to be inadequate if, as we have seen within university settings, it is a one-off, checkbox exercise. Programs must be ongoing, covering the lifecycle from early education, through primary and secondary education, into further education settings, workplaces and beyond.

Finally, prevention education programs must be regularly evaluated by experts to ensure that they remain fit for purpose and must be updated regularly to ensure they are meeting the needs of their intended audiences.

EROC Australia witnesses, on an almost daily basis, the harm caused by a lack of RSE within university and residential college settings. This harm ripples outward, across all facets of society where RSE is lacking, including homes, workplaces, sport clubs, and courtrooms. The harmonisation of consent laws may be a first step towards better addressing sexual violence within Australia, but without a concerted, well-resourced, expert-developed, society-wide preventative approach, we believe that the prevalence of sexual violence will remain unacceptably high.



## Appendix A

The Australian Human Rights Commission's 2017 *Change the Course* report revealed that 1.6% of Australia's university students were sexually assaulted in a university setting on at least one occasion in 2015 or 2016. With approximately 1.4 million students attending Australian universities in that period, that equates to **215 sexual assaults occurring within a university setting per week**. In that same period, 6.9% of all university students were sexually assaulted across any context<sup>6</sup>.

The results of the second national survey, the *National Student Safety Survey (NSSS)* which was undertaken in 2021, confirmed that little progress has been made in reducing the prevalence of sexual violence within university communities, despite the promises made by universities following the release of the *Change the Course* report in 2017. The NSSS found that 1.1% of the 1.3 million students studying at an Australian university had been sexually assaulted within a university context within the previous 12 months – equating to **14,300 sexual assaults per year, or a staggering 275 sexual assaults occurring within a university context each week, every week**.

Strikingly, at the time the NSSS was conducted in 2021, just one in three student respondents were taking some or all of their classes on campus as a result of the pandemic. It is likely **that the prevalence of sexual assault within a university context would likely be much higher once students returned to campus full time**.

The NSSS asked participants what actions were needed to reduce prevalence rates of sexual violence at universities. **Almost 1 in 5 (19.7%) recommended educating students about sexual assault and consent**<sup>7</sup>. Given that all but three universities reported to the higher education regulator, the Tertiary Quality and Standards Agency, that they were providing online sexual assault and consent training to their students, this suggests that the programs provided are inadequate<sup>8</sup>.

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<sup>6</sup> Australian Human Rights Commission. "[Change the course: National report on sexual assault and sexual harassment at Australian universities](#)." (2017).

<sup>7</sup> Heywood, W., Myers, P., Powell, A., Meikle, G., & Nguyen, D. "[National Student Safety Survey: Report on the prevalence of sexual harassment and sexual assault among university students in 2021](#)." The Social Research Centre (2022).

<sup>8</sup> Tertiary Education Quality and Standards Agency "[Report to the Minister for Education: Higher education sector response to the issue of sexual assault and sexual harassment](#)." (2019).