

29 June 2018

NSW Law Reform Commission  
GPO Box 31,  
SYDNEY NSW 2001

By email: [nsw-lrc@justice.nsw.gov.au](mailto:nsw-lrc@justice.nsw.gov.au)

**Re: Preliminary Submission on the Review of Consent in Relation to Sexual Assault Offences**

Dear Commissioners

I am writing on behalf of the University of Technology Sydney (UTS) in relation to the NSW Law Reform Commission's current review of consent and knowledge of consent in relation to sexual assault offences, as dealt with in s 61HA of the Crimes Act 1900 (NSW).

At UTS, social justice is at the heart of our mission and role in the community – we are committed to driving positive social change through our stakeholders and in the world beyond our campus. This commitment is reflected by a diverse set of institution-wide social justice initiatives that have expanded in scope and depth since UTS was established. We believe that universities have a significant role to play in driving change through education, research and practice.

As the Commission would likely be aware, UTS, along with many other Australian Universities, has been undertaking a body of work over the past two years in response to the growing international conversation about sexual assault response and prevention in the higher education sector. This is a challenge for us all.

Building on existing work to prevent sexual assault and sexual harassment, in early 2016, Australian universities joined to launch a world-first initiative - *Respect.Now.Always*. This initiative aims to expand students' understanding about what constitutes unacceptable or criminal behaviour, to challenge attitudes and assumptions that give rise to those behaviours, and to ensure that support is available for those students who experience them.

During 2017, UTS staff and students have been working intensively on this initiative to improve our ability to prevent and respond to sexual assault and sexual harassment and to create a campus culture of zero tolerance.

It is important to emphasise that UTS has adopted a student-centered approach to ensure that our work in this area both reflects students' experiences and meets students' needs and expectations. This includes the establishment of a Student Consultative Group and a program of work by the UTS Design Innovation Research Centre (DI:rc) to establish a deep qualitative understanding of student perspectives to inform the design of future work.

UTS has established a Prevention of Sexual Assault and Harassment Working Group, which reports to the Provost, and is led by a dedicated Project Officer. The working group is looking at

key areas such as education and awareness and we are using the expertise within DI:rc to examine ways to improve the student experience in reporting sexual assault and harassment, and in accessing support.

We have now developed and tested student-focused communications regarding sexual consent across campus and social media and have begun introducing mandatory student education around consent for our more than 40,000 students and all staff members. We are currently attempting to do something that no other Australian university has done: roll out this *Consent Matters* training to all 50,000+ members of our community.

This builds on a range of other initiatives to make our campus safer including:

- A 24/7 UTS trauma-informed Sexual Assault Support Line (1800 531 626) and updated our online portals with clearer information for staff and students on support and reporting.
- Expanded CCTV monitoring of the UTS precinct to 24 hours, 7 days a week. We have refocused our 24-hour security guard engagement on early intervention – to prevent rather than react to incidents.
- Security officers patrol the precinct by bicycle from 6pm to 6am, allowing fast response and the hours of our Security Shuttle Bus service, in place for a decade now, have been expanded by two hours to 2am.
- Representatives from all ActivateUTS clubs receive training in identifying, preventing, reporting and responding to sexual assault and harassment.
- All members of the UTS Housing Resident Networker program receive two day, face-to-face *Sex and Ethics* training.
- We have increased the number of counsellors trained in responding to trauma to the equivalent of 11 full-time positions and are in the process of recruiting an additional three counsellors. They now include a social worker with a background in sexual health.
- Emergency numbers are being included on the reverse of newly issued student and staff cards from 2018 and we have introduced an online portal for those who wish to make a disclosure about sexual harassment or sexual assault but prefer not to do so in person.

This important work will remain a high priority for UTS during 2018-19.

Our work with DI:rc and the feedback we are beginning to receive from students as we roll out the *Consent Matters* training is offering us a range of important insights into young people's experiences of sexual assault and consent, and ways in which their experiences of reporting incidents of sexual assault and accessing support might be improved. While this data is still preliminary, it responds to the Commission's terms of reference in this review in relation to:

- Whether s 61HA should be amended, simplified or modernised;
- The practical application of s 61HA, including the experiences of sexual assault survivors in the criminal justice system; and
- Sexual assault research and expert opinion.

In conducting their research, DI:rc engaged nearly 3000 students and 200 UTS staff through interviews, workshops and events using applied design research methods derived from applied ethnography and participatory design; including interviews, participatory design research events, co-design, sensemaking, values-based exploration and problem reframing. It represents

the first in-depth qualitative analysis on sexual assault and harassment conducted at UTS, and was especially significant in its inclusion of student perspectives to inform decision-making.

The research highlights that young people (in particular) need clear guidance about what constitutes consent. Among the key insights from the DI:rc research are that students are actively interested in seeking a better understanding of appropriate and lawful behaviour. Many students expressed a lack of understanding about what constitutes sexual assault and sexual harassment. Male students in particular identified concern about being “unknowing or unwitting perpetrators”.

This uncertainty is compounded for students from different backgrounds and experiences and with different cultural perspectives on sexual assault. UTS has a particularly diverse student cohort which contributes to widely differing understandings around this issue including:

- 12,400 international students from more than 120 countries;
- 2000 domestic students from non English speaking backgrounds;
- 1600 students with disability;
- 300 Aboriginal and Torres Strait Islander Students.

As a consequence, among young people in our community we cannot assume either a common understanding or a level playing field when it comes to matters related to an understanding of sexual assault and consent.

Students in our research told us that:

*In [my home country] people see sexual assault and sexual harassment as normal... people don't really talk about it*

and

*I had no idea when I first arrived [in Australia] what to do about sexual assault*

In the context of this uncertainty, moving towards a "free agreement" model of consent laws, like that of Tasmanian and Victorian jurisdictions would be an important step in creating greater clarity in the community about what constitutes consent - specifically that an active verbal indication of consent is necessary before engaging in sexual activity.

Significant numbers of young people, including our students, continue to report non-consensual sexual encounters. According to the Australian Human Rights Commission's national report into the prevalence of sexual assault and harassment of university students, based on 793 survey responses from UTS students:

- 8.3% had experienced sexual assault in all settings during 2015-16
- 2.2% of survey respondents reported they had experienced sexual assault in a university setting during 2015-16.

According to the Australian Human Rights Commission's survey, of university students who reported experiencing sexual assault, 23% reported that they had reported the incident to police. While this is at a slightly higher rate than for the Australian population more generally (ABS data indicates that only 17% of women who experienced sexual assault in the last 12 months reported that they had contacted the police), this rate of reporting emphasises victims concerns about the efficacy of legal responses to sexual assault.

Amending and simplifying s 61HA can only assist in providing greater clarity, simplicity and transparency for young people, and the broader community, around what constitutes consent

and so increase their confidence in the ability of the police and our legal system to deliver justice to victims of sexual assault.

In addition to amending the law, UTS would strongly encourage the Government to ensure that such legislative change is accompanied by a comprehensive program of community education. Ensuring that the community is aware of such changes and what they mean in practice is vitally important in creating the cultural change necessary to deliver reduced rates of sexual assault.

We have identified through our own research that such awareness raising activities are both critically important and sought after by young people. Feedback provided by students completing the *Consent Matters* module clearly reflects this through comments such as:

*It has made me more aware of how important it is to verbally have a conversation about consent.*

*Consent means an active yes rather than saying no if you don't consent. All parties to sex need to seek an affirmative yes from others before and during sex.*

*I feel more educated about what is not appropriate when it comes to unlawful sexual behaviour*

*After completing those modules, there is one attitude that is changed. That is, my attitude towards how and what steps to detect/acquire consents from others*

*I better understand how important it is to seek consent in all situations.*

Another theme which has emerged via student feedback was that for many young people there was a lack of understanding about the relevance and importance of consent across a range of relationship types. For example, students told us that:

*I'm in a healthy loving relationship but am sometimes reluctant to decline sex if I'm not feeling it to not disappoint my partner. This course has inspired me to try be more assertive.*

*I always thought consent is important. However, worried that my partner would think it could kill the mood. After completing this course I'm confident to step up and talk to them about this.*

We have also identified that the disparity in prior knowledge of respectful relationships and sexual assault among students, offers opportunities for increasing knowledge in primary and secondary education settings. Feedback from students engaged through both DI:rc research and face-to-face *Sex and Ethics* training indicates that while the majority of Australian students have received some education around sex and human reproduction by the time they complete secondary school, there is only minimal focus on issues of consent, ethical sexual behaviour or sexual assault.

While the secondary education of international students is clearly outside the scope of the NSW Government, however, we would strongly encourage the Department of Education and Training to ensure that information about any legislative changes to consent provisions are appropriately included in NSW primary and secondary school curricula. Such curricula should be further

supported by Government supported education and awareness initiatives aimed at school aged children and young people.

In conclusion, UTS is pleased to be able to contribute to this important review. We look forward to the Commission recommending changes to sexual consent provisions in the Crimes Act that increase community understanding of sexual consent and increase community confidence in the capacity of our legal system to deliver justice to survivors.

Please feel free to contact [REDACTED]  
[REDACTED] should you require any further information.

Yours faithfully

A black rectangular redaction box covering the signature of Professor Andrew Parfitt.

Professor Andrew Parfitt  
**Provost**