The Vice-Chancellor,

University of……………………..

Dear …………….,

I am an alumnus/alumna of the Uni ……[University Name]……, having graduated in …(Year of Graduation)…. I have always taken a keen interest in my former university.

I am concerned to learn that some Australian universities have established their own disciplinary processes to investigate and adjudicate allegations of sexual assault. In saying this, I draw the distinction between sexual harassment and sexual assault because if sexual assault is proven, it is a criminal offence.

Such processes seem inappropriate and improper for a university which clearly cannot provide the normal safeguards for ensuring proper investigation and adjudication of acts constituting criminal offences.

Criminal offences are, because of the enormity of the consequence flowing from them, required to be proved beyond reasonable doubt. The processes which have been established by some universities abolish this requirement and replace it with the far lesser requirement of the balance of probabilities. The unfairness of this is obvious.

There is widespread and growing community concern regarding this issue. You will be aware that recently the Queensland Supreme Court (in Y v. University of Queensland) decided it was not appropriate for a university to investigate and determine whether a crime has been committed. Read the judgement here: <https://www.queenslandjudgments.com.au/case/id/342914>. (I do know that The University of Queensland is appealing that decision.)

Federal Education Minister Dan Tehan in a recent speech commented that “Universities have a duty of care to their students and that includes ensuring processes around the enforcement of any codes of conduct are legal, fair and transparent. If a student alleges they are the victim of a crime then our criminal justice system is the appropriate authority to deal with it.” Minister Tehan has now instructed the universities, through TEQSA, that the criminal justice system, not a university discipline process, is the right place to deal with alleged crimes that take place on campus or in the student community.

In the light of the matters set out above, I seek information from you regarding the Uni ……[University Name]……’s position in relation to this issue. Specifically, I would appreciate your prompt advice as to the following questions:

1. Does Uni ……[University Name]…… have a process in place regarding the investigation and adjudication of allegations of sexual assault? If so, could you please send me links to the appropriate section of the university’s policies?
2. If the university does have such a process, when was it put in place and how many such cases have been investigated and adjudicated by the university? In relation to the procedures: (a) Are records kept of the outcome of these cases? (b) What oversight is available to ensure procedural fairness in these processes and to ensure the due process rights of the accused are protected? (c) Is the accused allowed and advised to seek legal representation? (d) Does the process adopt prejudicial terminology such as referring to “victims” rather than “accusers” and if so, how does this process protect the presumption of innocence? (Until an allegation is proved, there is only an accuser not a victim.)

 (e) how does the process incorporate the legal precedents and procedural fairness requirements available to parties in matters before the courts.

1. If the university has such a process in place, does the university intend to repeal or substantially reform the process so that they comply with the legal judgment and recommendation from the Education Minister? If so, please provide a timetable as to when these changes will be made.

I raise the above matters out of concern for the reputation and welfare of ……[University Name]…… university. I am not only a …..[former student]….. of the university but also someone who holds the university in high regard.

I don’t disagree with the proposition that the university owes a duty of care to the safety of their students. I don’t argue with the proposition that the university should have the power to investigate and adjudicate alleged breaches of a sensible and reasonable code of conduct. What I do disagree with is that, given sexual assault is a criminal offense carrying a jail sentence, it is appropriate for the university to investigate and determine whether a sexual assault has occurred. That is a matter properly and exclusively for the police and the courts – in which context the accused is presumed not to have committed the sexual assault unless it has been proved beyond reasonable doubt.

To argue that what a university is doing is simply inquiring into whether there has been a breach of a code of conduct as opposed to whether a crime has been committed is a distinction without a difference. As the trial judge made perfectly clear in Y v. University of Queensland, determining whether there has been a breach first requires the university to determine whether a crime has been committed.

I’m concerned that universities that have gone down this path are exposed to legal and financial liability given the outcome of the recent decision of the Queensland Supreme Court as well as the increasing occurrence of successful law suits against universities in overseas countries where those universities have denied students their rights to procedural fairness.

I look forward to your earliest possible response regarding the above matters.

Regards,