

# INTERIM RESPONSE TO THE DRAFT TERTIARY EDUCATION QUALITY AND STANDARDS AGENCY BILL 2010



## 1. INTRODUCTION

- 1.1 TAFE Directors Australia (TDA) welcomes the opportunity to have been involved in the recent consultation process for the draft Tertiary Education Quality and Standards Agency (TEQSA) Bill 2010 and commends DEEWR for the open and receptive style in which the process was conducted with those who attended the two-day stakeholder meeting on November 9-10.
- 1.2 TDA also welcomes Minister Evans' announcement that the tabling of the Bill will be deferred until the Autumn Parliamentary sitting 2011 to allow consultation to continue.
- 1.3 This response is therefore to be regarded as interim. TDA reserves the right to submit subsequent more detailed comments on the legislation should this be deemed appropriate. The response also serves as a precursor to TDA's submission on the Draft Provider Standards which will be forwarded by the due date of February 17, 2011.

## 2. CONTEXT

- 2.1 In its comprehensive *Blueprint for Australia's Tertiary Education Sector* (hereafter the *Blueprint*), TDA set out nine key position statements relating to the development of Australia's tertiary sector. These were designed to provide a broad framework for the qualifications and organisational structures required to meet Australia's domestic needs, particularly the successful achievement of the COAG targets and improvement in national productivity, and so position Australia competitively in the global education landscape.
- 2.2 Four of TDA's nine positions are particularly relevant in considering the draft TEQSA Bill. TDA endorsed:
  - The definition of tertiary qualifications as 'those at diploma level and above, including where these qualifications may embed pathways from the qualification level below'. (Position 2)
  - The creation of a set of more unified tertiary education protocols incorporating new nomenclature for a wider range of organisational types and facilitating a single approval process for institutions operation in both Higher Education and VET (Position 4)
  - Progressive movement towards a single tertiary regulator framework (Position 5)
  - A strong interim National VET Regulator comprised of technical experts, rather than being representational; operating within a risk framework; and with legal and policy structures aligned with TEQSA (Position 6).
- 2.3 The extent to which these positions will be advanced by the TEQSA Bill is therefore TDA's yardstick for developing this response.

### 3. KEY ISSUES

#### 3.1 TEQSA and the concept of 'tertiary'

Although titled the Tertiary Education Quality and Standards Agency, it is regrettable that the Bill represents no progress on establishing a tertiary sector and simply entrenches the status quo. Under section 119, a key function of TEQSA is to register higher education providers, a higher education provider being defined in Section 5 as 'a constitutional corporation that offers or confers a higher education award.' By extension, the terms 'higher education' and 'tertiary' are synonymous and they are indeed used interchangeably throughout the documentation.

TDA maintains that this only serves to cause confusion and that it is also contrary to the intent of the Act as outlined in the Objects, particularly:

3(c) *to protect and enhance:*

(i) ....

(ii) *Australia's international competitiveness in the (higher education) sector*

3(d) *to encourage and promote a (higher education) system that is appropriate to meet Australia's social and economic needs for a highly educated and skilled population.'*

TDA argues that, given this situation, the title Higher Education Quality and Standards Agency more accurately describes the coverage and scope of the Bill and that the term 'tertiary' would be better preserved for a time when the regulatory bodies for Higher Education and VET might be merged.

#### 3.2 The Changing Tertiary Landscape: A Wider Range of Organisational Types

The Review of Australia's Higher Education System, 2008 (Bradley Review) outlined a vision for an Australian tertiary sector by outlining six '*Key Characteristics of an Effective Tertiary Education and Training System*' (page 179). Further, in recommendations 43 – 46, the Review specifically outlined some initial steps required to make it a reality. This raised widespread expectations that, as the recommendations of the Review were implemented, a tertiary sector would evolve. Not surprisingly, much has happened since with many providers in both Higher Education and VET developing more flexible approaches to delivery that blur the distinctions between the sectors.

Even in the short time since TDA released its *Blueprint* in May this year, there have been considerable new developments that might be regarded as progress towards the tertiary sector that Bradley envisaged.

Examples of developments in TAFE include:

- The profile of Polytechnic West, announced in late 2009, and its role in Higher Education has gained ground.
- Having been granted registration as a Higher Education Provider, TAFE NSW announced in August that it would be offering its first degree in 2011 with more to follow.
- The University of Ballarat (UB) developed a partnership with a number of regional TAFE Institutes in Victoria enabling them to offer UB degrees (and not be reliant on developing their own).
- Both the NSW and Victorian Government have developed tertiary education plans, which recognise the role of TAFE in the provision of Higher Education.

- The ACT Government has established a Tertiary Taskforce which will develop a 'connected tertiary system' for the ACT.
- In September, the South Australia Government announced a \$125m state-of-the-art facility at Tonsley Park which will bring together TAFE, universities and industry, facilitating pathways between TAFE SA and universities and linking training providers to the latest developments in research and development.

In the Higher Education sector, the following developments demonstrate further blurring of the sectors:

- The University of Canberra announced its intention to become an 'omniversity', encompassing all stages of the education process and including private providers under the university umbrella.
- In September, Queensland's Premier Bligh approved a new dual sector university through the amalgamation of Central Queensland University with Central Queensland Institute of TAFE.
- Monash University, a Go8 university, has signed agreement with three Victorian TAFE institutes.

In TDA's view, the draft TEQSA Legislation therefore represents a lost opportunity to move Australia forward in a direction that has gained significant momentum and is increasingly becoming inevitable. It is also clear that the Commonwealth is falling behind the States in their various initiatives to create a tertiary sector.

### **3.3 Provider Category Standards – New National Protocols**

TDA welcomes the work to develop new Provider Category Standards to replace the existing National Protocols but notes with some disappointment that it was not invited to be part of the initial round of consultations in March and April 2010 to develop the second draft. Had TDA been included, it would certainly have argued against maintaining the existing categories.

In fact, TDA considers that its exclusion from this first round of consultations has put it at a distinct disadvantage. Judging from the *'Draft Provider Standards - Consultation Guide'*, it is acknowledged that there may well have been some tentative moves towards opening up the provider categories that the stakeholders that were present rejected. Evidence for this is based on the following:

- The documentation refers to 'two new additional categories', which do not appear in the final list
- It also refers to a total of six provider categories when only five are ultimately nominated
- It includes an apparently much looser descriptor for the 'University College' category than the existing one (i.e. no reference to a transition arrangement or mentoring by another university). However TDA has since been advised that this is not intended and the current arrangements would remain.

As well as finding these discrepancies in the documentation very confusing, TDA can see no logical reason for retaining the current definition of the 'University College' category or even for the definition contained in the circulated version of the *'Draft Provider Standards – Consultation Guide'*. It is therefore proposed that this category be revised as follows:

*'The provider delivers qualifications that are covered by the Qualification Standards across a range of broad fields of study (including up to Masters coursework or research degrees in at least three broad fields of study and*

~~Research Masters and PhDs or equivalent Research Doctorates in at least one broad field of study’).~~

Consistent with all of the above and the multiple examples provided in 2.1, the second draft falls well short of TDA’s expectations of a new tertiary sector. It fails to recognise the existing and growing contribution of Higher Education Providers in the TAFE sector and only serves to reinforce the increasingly artificial boundaries between Higher Education and TAFE.

From the perspective of government wishing to improve educational attainment for lower SES groups, it is important to recognise that the Higher Education Providers in the TAFE sector share some of the social responsibility characteristics of universities that are recognised in the draft category standards for universities.\* This was identified in TDA’s *Blueprint* as one of the defining characteristics of TAFE institutes and differentiates them from those Higher Education Providers (and RTOs) operating in the commercial market. In this respect, Higher Education Providers in TAFE will be disadvantaged if they are treated the same as all other non-university providers. TDA is concerned that they may be subject to overly onerous registration and accreditation requirements that give scant regard to their capability and are therefore unwarranted. TDA recommends that more detail on TEQSA’s proposed risk-based regulatory approach be circulated as soon as possible.

TDA also draws attention to the fact that by identifying a special category for overseas Higher Education institutions operating in Australia, the proposed new category structure appears to give their role far greater weight than it does to the Higher Education Providers in TAFE. This is anomalous, given that currently only two such overseas providers appear on the national register, both operating out of Adelaide AND WOULDN’T MEET THE REQUIREMENTS.

TDA foreshadows that in a separate response and within the timelines notified by DEEWR, detailed comment on the Draft Provider Category Standards will be submitted.

### 3.4 A Single Tertiary Regulator Framework – Alignment of TEQSA and the National VET Regulator

A key consideration for TDA in promoting its goal of moving towards a single tertiary regulator is the extent of alignment between TEQSA and the National VET Regulator so that a merging in due course could be as smooth as possible. This is important in several critical respects:

- In the *Blueprint*, TDA put the view that the dominant consideration in moving towards a single tertiary regulator is to improve the opportunity for students to move in both directions between VET and Higher Education according to their capacities and aspirations throughout their lives.
- TDA also outlined the case for institutions operating in both Higher Education and VET to be subject to only one approval process and welcomed this point being endorsed and emphasised by Bruce Baird in his report ‘*Stronger, simpler, smarter ESOS: supporting international students*’, March 2010.

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\* Standards in the draft new university category include:

6. The provider has an extensive range of student services including student academic and learning support, and extensive resources for student learning in all disciplines offered.
7. The provider demonstrates engagement with local and regional communities and demonstrates a commitment to social responsibility in its activities

- Australia's reputation in the international market has been considerably damaged. The introduction of a single, rigorous and coherent regulatory framework is a key step in repairing this damage.
- TDA understands that, while the states and territories have made their decisions about the establishment of the two separate bodies, there is as yet no formally declared position about the merging of them. Lack of alignment will not assist this situation.

In recognising the constitutional issues which necessitate the different legislative approaches to establishing TEQSA and the National VET Regulator, TDA believes it is all the more important for the two bodies to work extremely closely. There is a danger that these differences will act as a disincentive to alignment or, at worst, a convenient rationale for increasingly incompatible approaches.

In this regard, the confidentiality requirements of the parallel consultation processes for the two pieces of legislation are not ideal, since features and changes may be agreed in one process that are not considered in another. For example, during the TEQSA consultation process, considerable modifications were agreed to with a small group of university representatives which may or may not be consistent with changes that emerged from the earlier VET consultation process.

TDA is therefore only in a position to comment on the alignment of the two from the point of view of principle.

Based on the elements of the draft TEQSA Bill and consistent with the *Blueprint*, TDA would expect alignment in both agencies in at least the following key areas:

- A commission structure with the CEO being the Chief Commissioner;
- Commissioners being independent and appointed on the basis of their expertise rather than being representative;
- A risk management approach to regulation that balances proportionality with appropriate powers and which is based on individual provider capability rather than provider category;
- Emphasis in the Objects of legislation on the importance of meeting labour market demands, on currency with practice in the relevant industry/field of study and on equipping students for a global future;
- Efficient time-lines/turnaround times for decision-making that recognise the commercial pressures facing institutions in a demand-driven system;
- A comparable fee structure, that is based on cost-recovery and which would benefit from greater efficiency when the two agencies merge;
- A consistent approach to the separation or otherwise of the regulatory and standard-setting roles in the two sectors.

With regard to the last of these, TDA is concerned that Part 8 of the Bill establishes the Higher Education Standards Panel as part of the TEQSA structure and that its functions are conducive to a blurring of the roles at best and interference at worst. TDA asserts that the integrity of the Higher Education/tertiary system is best served by the regulatory and standards-setting roles being kept separate. Further, in the event of the Higher Education and VET regulatory agencies combining in future, the inclusion of the two standards bodies in the same structure would be cumbersome and potentially unduly compromise their independence.

#### **4. CONCLUSION**

TDA maintains that:

- By essentially remaining with the status quo, the draft TEQSA Bill has failed to seize the opportunity to create a new and vibrant tertiary sector that will equip Australia for the future and ensure legislation is keeping pace with practice.
- There is strong evidence of an emerging tertiary sector that will not be reflected in the legislation.
- The alignment of TEQSA and the National VET Regulator remains a critical issue, which requires much closer attention.
- The Draft Provider Category Standards represent another opportunity to make progress on the tertiary sector which TDA will now turn its attention to. This will include arguing the case for opening up the provider categories so as to be consistent with current and emerging practice.
- Circulation of TEQSA's risk-based regulatory approach at the earliest opportunity would assist in allaying concerns about overly onerous processes.
- TDA reserves the right to comment further on the legislation as subsequent drafts come to hand.

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Chair  
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November 2010***