Australian Universities Quality Agency

Chair: Professor Joanne Wright

Executive Director: Dr David Woodhouse

29 March 2011

Mr Tim Watling
Secretary
Senate Standing Legislation Committee on Education, Employment and Workplace Relations
Parliament House
CANBERRA ACT 2600

Dear Mr Watling

TEQSA Bill Drafting Inconsistency

I write to draw to your attention an inconsistency that has come to light in the way the TEQSA Bill has been drafted, which may have serious consequences in the future if not addressed.

At various points, the Bill uses the phrase 'have regard to'. For example in ruling on an application to self-accredit courses of study, TEQSA must 'have regard to the Threshold Standards' (s 41). The same phrase is used in s 38 on applications to change to a different provider category.

This contrasts with s 49 on course accreditation, which says that the course of study must 'meet' the Course Accreditation Standards. S 21 also says that TEQSA may grant an application for registration if the institution 'meets' the Provider Standards.

By using the lesser term 'have regard to' in s 38 & s 41, it follows that TEQSA would not be bound by the Threshold Standards in deciding on an application for self-accrediting status. We are concerned that using the lesser term 'have regard to' in these contexts could throw TEQSA's application of its power in these sections into legal doubt.

An example of the problems that may be caused by the use of this term came to light recently in Victoria, where the VRQA backed off from deregistering a provider because the Victorian legislation only required VRQA to 'have regard to' the National Protocols, and so they felt that a strict application of the Protocols could be challenged.

I believe that this anomaly should be rectified to avoid the risk of TEQSA not having effective legislative authority to make some of its regulatory decisions.

Yours sincerely

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Executive Director *and* Company Secretary

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