



Universities Australia Submission to Senate Inquiry on *Tertiary Education Quality and Standards Agency Amendment Bill 2014*

2 May 2014

Universities Australia thanks the Senate Education and Employment Legislation Committee for this opportunity to make a submission to its current inquiry into the *Tertiary Education Quality Standards Agency Amendment Bill 2014* ("the Bill").

In this brief submission Universities Australia will provide comments on the following sections of the Bill:

- Quality assessments
- Delegations
- Period of Registration and Accreditation
- Chief Executive Officer
- Notifications of Decisions
- Directions to TEQSA

Background and General Comments

Universities Australia (UA) has consistently supported the existence of a well-respected and credible national higher education regulator that protects and enhances the reputation and integrity of Australia's higher education system. UA worked closely with Government during the establishment of the Tertiary Education Quality and Standards Agency (TEQSA) and the drafting of the TEQSA Act.

In the past two years it has become apparent that TEQSA has not operated as effectively as was originally anticipated, particularly in the strategic and operational application of the legislated basic principles of necessity, risk and proportionality.

UA raised a number of issues during the 2013 Review of Higher Education Regulation ("the Review"), and these were accepted by the Review panel.

In reflecting the recommendations of the Review, the Bill is generally supported by UA. Some minor issues as they apply to universities are outlined below.

Quality Assessments

UA supports the amendments that would remove TEQSA's quality assessment function. UA argued for this in its submission to the Review, and notes that the Review panel agreed with this approach, stating that the quality assessment already undertaken (on third party service provision) "*will neither ensure quality for the Australian community nor provide value for money in the effort required on behalf of providers.*"



The quality assessment issue is closely tied to the wider issue of quality assurance. The explanatory memorandum for the Amendment Bill states that *“it would be more effective to allow providers to manage their own quality assurance and for TEQSA to focus on the timely delivery of its core regulatory activities of registering providers and accrediting courses.”* In relation to this UA notes that the TEQSA Act as amended by the Bill would retain Section 134(e)(iii), which instructs TEQSA to *“collect, analyse, interpret and disseminate information relating to quality assurance practice, and quality improvement, in higher education”*.

It remains UA’s view that TEQSA’s role in assessing universities achievement of the higher education standards (as set by the Minister on recommendation by the Higher Education Standards Panel), combined with internal university quality assurance processes and structures, as well as the competitive pressures of the market system created by the demand driven funding policy, act to ensure that universities have the tools and the incentives to effectively monitor and address quality in absolute and relative terms.

In accordance with the tenor of the Review’s findings, and the purpose of the Bill as reflected in the explanatory memorandum, UA therefore recommends that Section 134(e)(iii) be repealed in its current form. The activities mandated in this clause will only serve to distract the agency from its core functions of registration and course accreditation.

Delegations

Members of UA have frequently commented that TEQSA’s internal processes are often slow and unresponsive, with notable bottlenecks in decision making at the level of the Commission. This was also reflected in the Review, which reported that the Commissioners themselves were frustrated at the limitations placed on them by the current Act.

UA therefore supports the amendments that will add flexibility and speed to decision making and appeal processes.

Period of registration and accreditation

UA has not previously held a formal position regarding the period of registration or accreditation, though UA representatives argued for a registration period of seven years during the drafting of the existing TEQSA Act.

UA offers in-principle support for flexibility in extending registration and accreditation periods. The argument that this will enable streamlining of process and reduce the number of required contacts between providers and TEQSA is sound.

However, it is noted that the Bill does not provide for a maximum possible duration for extensions. Given this, and as the integrity of the regulatory system is as reliant on perception as much as application, it will be important that any decision to extend registration or accreditation, and the duration of the extension, must be backed by robust internal guidelines and strict criteria to ensure that the decisions made are transparent, proportionate and necessary.

Chief Executive Officer

Although UA understands that the proposed amendments to split the Chief Commissioner and Chief Executive Officer roles have been suggested by the Agency itself, the benefits may not be commensurate with the cost, particularly taking into account of the size of the organisation. If the intent is to free the Chief Commissioner from day-to-day administration and organisational tasks, this could be achieved by incorporating Section 154L (Delegation by the Chief Executive Officer) of the Bill into Division 4 (Chief Executive Officer) of the existing Act. This would provide scope for the Chief Executive Officer/Chief Commissioner to assign even senior administrative tasks to a Chief Operating Officer or equivalent staff member, while retaining the official responsibility.



Notifications of Decisions

These amendments have been requested by TEQSA itself and will serve to streamline and improve the service TEQSA offers higher education providers. UA therefore supports the amendments as drafted.

Directions to TEQSA

The proposed amendment to Section 136 is supported by UA. It will ensure that there is no ambiguity between Sections 135 and 136, and retains the limitation on the Minister's ability to direct TEQSA's functions in regard to any specific issue or provider.

However, UA does note that the equivalent sections in other regulatory agencies' Acts often impose other conditions on a Minister's ability to provide formal directions. Section 12 of the *Australian Securities and Investments Commission Act 2001*, for instance, contains clauses requiring the Minister to notify ASIC in writing that he or she is considering giving a direction, and allowing the Chairperson the opportunity to discuss the potential direction with the Minister.

UA considers that the inclusion of an equivalent clause in the TEQSA Act would be consistent with ministerial powers established by other regulatory agency legislation and help to assure administrative and procedural integrity.

Conclusion

UA supports the Amendment Bill. As drafted it will serve to better focus TEQSA's activities on the core business of registration of providers and accreditation of courses and help to ensure that operational effect is given to the TEQSA Act's basic principles for regulation.

UA will be happy to discuss these comments with the Committee either in person or via a supplementary submission.