

1. Introduction

TDA has been actively involved in the development of the TEQSA legislation in all of its iterations and has submitted two responses to DEEWR (attached)¹ which, while broadly supporting the intent of the legislation, raise questions about the extent to which it reflects the emerging tertiary sector in Australia.

Parallel with the development of the legislation, TDA has also contributed to the debate on the development of the TEQSA Provider Standards, the third iteration of which has recently been released. In this regard, TDA has broadly supported the Registration Standards and the Course Accreditation Standards but has argued strongly that the TEQSA Provider Category Standards, like the TEQSA legislation, entrench the status quo rather than create the context for a diverse tertiary sector which will allow the Government to meet its targets for participation and attainment.

In a related vein, TDA has had involvement in the development of the legislation for the National VET Regulator (NVR).

From TDA's perspective, a key issue with both pieces of legislation is to ensure their alignment so that the merging of the two regulatory bodies - TEQSA and the Australian Quality Skills Authority (AQSA), as the NVR is now called – can occur as smoothly and as quickly as possible.

2. Summary of Key Points Raised by TDA to Date

Strong Support for Improved Regulatory Rigour

It is to be predicted that, as the peak body representing TAFE's throughout Australia, TDA welcomes improved rigour in standards for regulation and quality and has no difficulty in committing its members to whatever level of rigour is seen as appropriate to ensure Australia's Higher Education system compares with world's best, so that there is no doubt about the quality and credibility of those TDA members that are also Higher Education Providers. The lessons from inadequate regulation in the VET sector and the dire impact of this on the international market are further impetus for this stance.

TDA's comments on the legislation have therefore focussed predominantly on the context in which the legislation will operate rather than the details of the legislative provisions.

¹ Two previous inputs from TDA are:

- Interim Response to the Draft Tertiary Education Quality and Standards Agency Bill 2010 dated November 25th, 2010
- Response to Tertiary Education Quality and Standards Agency Bill 2010 Exposure Draft 06/12/10, dated December 17th, 2010

Reflecting the Emerging Tertiary Sector

As outlined in the in two earlier responses to the TEQSA legislation, TDA's views on the creation and operation of TEQSA are consistent with its position paper TDA *Blueprint for Australia's Tertiary Education Sector, 2010*, (hereafter the *Blueprint*). The *Blueprint* presents a case for a tertiary sector that is characterised by its quality, diversity, opportunities and accessibility offered through a wide range of organisational types.

TDA has therefore expressed its concern that the draft TEQSA legislation does not reflect the rapidly evolving tertiary sector in Australia. It is worth re-stating that in recent times the sector has seen:

- The establishment of at least two additional institutions bearing the name 'polytechnic'²,
- Moves to establish the sixth dual sector university³, and the first in Queensland, through the amalgamation of Central Queensland University and Central Queensland Institute of TAFE
- The establishment of a regional university network comprising a host university and a number of small regional TAFE institutes under one academic 'umbrella'
- Change to the structure of a university⁴ to incorporate other sectors of education including schools and VET, both public and private
- Increases in the number of Higher Education Providers (HEPs) in the TAFE sector
- Further developments in franchising arrangements or joint delivery of university courses in many different forms⁵
- The instigation of tertiary planning processes by a number of the States and Territories⁶.

Against this backdrop, TDA has argued that the TEQSA legislation is internally contradictory in that the Objects articulate the aim of protecting and enhancing 'excellence, diversity and innovation in higher education in Australia'⁷, but does not facilitate heterogeneity of organisational type. It uses the terms 'tertiary' and 'higher education' interchangeably leading to some confusion about what the legislation is in fact attempting to achieve. This has been addressed to a minor extent in the Bill, which at least acknowledges (in the *Definitions*) the existence of a VET sector.

Alignment between the TEQSA Legislation and the NVR Legislation

Aware of the many constitutional and legal differences between the Higher Education and VET sectors, TDA has been at the forefront of arguments to maximise alignment between the two pieces of legislation. The ongoing consultation process in both sectors makes this even more challenging. Hence TDA recommended in its second (December) response to the legislation that an alignment project be initiated to ensure ongoing consultation between the two bodies. While it is stated that ongoing

² Includes Polytechnic West and the Tasmanian Polytechnic addition to the existing use of the name in the private sector

³ The others being Ballarat, Charles Darwin, RMIT, Swinburne, Victoria University

⁴ University of Canberra

⁵ For example 'Deakin at Your Doorstep'

⁶ For example, Victoria, NSW, Queensland and the ACT

⁷ TEQSA Bill (Exposure Draft 06/12/2010) p.4

consultation and streamlining is occurring⁸, there are still key issues of difference that might have been avoided.

3. Key Changes in the Current Bill from the Exposure Drafts

Basic Principles for Regulation

The Bill introduces three basic principles for regulation - regulatory necessity, reflecting risk and proportionate legislation - that were not included in the exposure drafts. TDA makes the following observations:

- During the consultation process it was clear that universities were concerned that the advent of TEQSA might result in increased, and in their view unwarranted, intervention in their affairs. The introduction of the principles appears to be a result of their advocacy and provide a vehicle for such intervention to be reduced. This may not be in the best interests of the new regulator.
- The principles may give rise to vexatious litigation of the type that has been prevalent in the VET sector. For example, the regulator and the provider/entity may have vastly different views about ensuring that the exercise of regulatory power *'does not burden the entity any more than is reasonable necessary'*.⁹
- There are no parallel principles in the NVR Legislation.

Commissioners

TDA notes the fact that the TEQSA Bill no longer contains a condition related to being appointed a Commissioner that was included in the exposure drafts. This stated that a person *'who is, or has been at any time in the past 2 years, an executive officer of a higher education provider is not eligible for appointment as a Commissioner'*. The case for the removal of this exclusion was argued at the consultations and is welcomed.

However, a similar exclusion remains within the NVR legislation and is another instance of non-alignment.

TDA has also argued that, in the interests of promoting a truly tertiary sector, the existence of two full-time and two part-time TEQSA Commissioners would allow for one of the part-time Commissioners to have a background in VET, given that 48% of all HEPs are also Registered Training Organisations (RTOs) in the VET sector, including 14 of the 39 universities.

The existence of part-time Commissioners would also enable at least one to concurrently serve as an AQSA Commissioner.

However, notwithstanding TDA's efforts to achieve alignment, there is no provision for part-time AQSA Commissioners in the NVR legislation that would enable this reciprocity.

⁸ For example, in TEQSA Fact Sheet 2

⁹ TEQSA Bill, section 14

4. Conclusion

In the interests of promoting a world-class tertiary education system in Australia, TDA broadly supports the TEQSA Bill as it does the NVR Bill.

TDA's views have been expressed in the two attached earlier submissions on the legislation to DEEWR.

TDA remains concerned about the Provider Category Standards that accompany the Bill and is responding to DEEWR on the third iterations of the Standards.

For the reasons outlined above and in the earlier submissions, TDA maintains that the TEQSA Bill has not seized the opportunity presented to realise a truly tertiary sector.

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