



Students' Representative Council The University of Sydney

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To the Senate Education, Employment, and Workplace Relations Committee,

I write on behalf of the Students' Representative Council of the University of Sydney. The SRC is the democratically elected representative body for 32 000 undergraduate students at the University of Sydney.

We welcome the opportunity to comment on the Tertiary Education Quality and Agency Bill 2011. We support the creation of TEQSA, and we believe it has significant potential to protect the rights of both domestic and international students in Australia and ensure that all receive a high quality and equitable education.

We make comments on matters of interest to students in the order they appear in the Bill. We make comments in the form of either:

- (i) *recommended amendments* to Sections,
- (ii) *support* for Sections or Parts which we would want retained and
- (ii) the raising a *question* where we have concerns and seek more information.

Yours sincerely
Donherra Walmsley

83rd President
Students' Representative Council, the University of Sydney



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Recommendations

The SRC recommends that s.32(1)(b)(i) be amended to 'staff student ratio' rather than 'staffing profile.'

The SRC recommends that s.32 be amended to include a reference to placing a condition on providers that requires a provider to invest in, or return, a certain minimum proportion of fees back into teaching and learning.

The SRC recommends that s.36(4) be amended to reduce the period for renewing Registration from 7 to 5 years.

The SRC recommends that only public universities created by an Act of the States or Commonwealth within Australia and which offer broad research informed teaching be able to define themselves as 'university' under s. 38, s.39 and s.41.

The SRC recommends that Standards not be established before full consultation with the key stakeholder - students.

The SRC recommends the amendment of s.58 to include a Standard specifically dealing with Student Rights.

The SRC recommends the amendment of s.58 to include a Fairness Standard (incorporated in the Student Rights Standard) enshrining the principle that students should be treated fairly.

The SRC recommends that s.58 be amended to include a common Appeal Standard (incorporated in the Student Rights Standard) that allows for procedural fairness and external appeal on the merits.

The SRC recommends that the Higher Education Standards Panel constituted in s.167 include as one of its members a representative from the National Union of Students.



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Resourcing TEQSA – The Explanatory Notes

The SRC questions the proposed level of funding for TEQSA and the Panel outlined in the Financial Impact Statement. We ask that the Committee seek more information from the Government, and recommend greater resources if required.

We note that the Bill's Financial Impact Statement indicates an appropriation of \$54 million between commencement in 2011 and June 2014, that is over 3 years. This is not a lot for the large scale job of regulation, investigation, quality assessment, standards development and information provision (including covering the costs of the My Uni Site) to be undertaken by TEQSA. Considerable resources will be needed if the Agency is to have any real impact over the whole sector. Constrained resources would mean the Agency would only have a limited focus on a narrow group of high risk providers and concerns. Tertiary education in Australia is a huge industry that draws in hundreds of thousands of local and international students. The many roles the Agency is set in the Legislation require sufficient resources. All students deserve to benefit from the work the Agency and the Panel can do. We ask the Committee seek more information from the Government.

The Context - The Deregulation of Student Places – The Second Reading Speech

The SRC recognizes that the key context of the Bill is that outlined by Senator Ludwig in the Second Reading Speech when he referred to the 'central reform' of the "move to a demand driven approach in which funding undergraduate student places will be based on student demand."¹

This is de-regulation, with an expected significant but unquantified expansion in the numbers of Commonwealth Supported Places. The 'demand driven' approach has some positive potential in meeting unmet need for a university places across the states. It will however lead to experiments by providers driven to meet 'market' demand for places from students. If those providers are driven by a profit motive or by the need for funds because they have insufficient public support then there will be risks to the quality of education students gets. There are risks with distortion in course offerings, cheap provision in some courses, and providers setting up courses where quality will be affected by overcrowding as they exceed their capacity. Market based 'signals' may have little impact on controlling such problems.

This context requires a Regulator with teeth, and with high Standards to ensure that providers meet their obligations and students are not exploited.

¹ Hansard, 23 March 2011,
[http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;adv=yes;orderBy=priority,title;page=12;query=Dataset Phrase%3A%22billhome%22%20ParliamentNumber%3A%2243%22;rec=2;resCount=Default](http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;adv=yes;orderBy=priority,title;page=12;query=Dataset%20Phrase%3A%22billhome%22%20ParliamentNumber%3A%2243%22;rec=2;resCount=Default)



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Part 1 Introduction

The SRC supports the objects of the Act as outlined in s.3, particularly s.3(e) - 'to protect students', and s.3(f)- to ensure students have access to information.

The SRC believes that this core function should be the key role for TEQSA.

Part 2 Basic Principles for Regulation

The SRC questions how 'reasonably necessary' would be determined in s. 14, which refers to the level of regulation not burdening an entity (such as University) more than reasonably necessary. We ask the Committee seek more information from the Government.

We have no desire to create an undue burden on universities which would divert resources away from teaching and learning, but nor would we want to see this section being used as an excuse for providers not to meet high standards.

The SRC broadly supports s.15 and s.16 which outlines the 'Principle of reflecting risk', and the 'Principle of proportionate regulation' but questions the degree to which these Principles would dominate regulatory decisions of TEQSA.

Risk is obviously an important matter that can affect students, but should not dominate the thinking of TEQSA, overriding other concerns about quality across the whole sector.

TEQSA has a role to make sure all providers meet their potential in meeting and exceeding standards. Given the relatively greater regard universities are held in compared to other providers, they should also have a proportionately higher set of standards they should be meeting.

The SRC questions how the requirement to 'have regard to' in s.15 will operate.

We are aware that there have been some problems in the operation of this phrase in other legislation.

Part 3 Conditions of Registration

The SRC supports the inclusion of s.26 requiring that the Standards apply to courses where a provider confers an 'award', even when the 'course' is provided by another entity.

We believe it is important that providers not be able to avoid meeting the standards when their awards are, for example, taught off shore or by third parties contracted by the provider.

The SRC supports the requirement in s.29 for providers to notify TEQSA where there is an event that will significantly affect the providers ability to meet the Standards.



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We question what will be defined as 'significantly' in s.29. and recommend it be replaced with a more concrete term.

We believe it is important that major changes in teaching standards not be made without oversight by TEQSA. One example of such a change in a course is a shift from face to face teaching to solely on-line teaching.

The SRC supports TEQSA being able to set certain conditions for providers to meet, such those outlined in s.32 in relation to maintaining staffing, facilities and support services.

The SRC recommends that s.32(1)(b)(i) be amended to 'staff student ratio' rather than 'staffing profile.'

The SRC recommends that s.32 be amended to include a reference to placing a condition on providers that requires a provider to invest in, or return, a certain minimum proportion of fees back into teaching and learning.

That is, we believe there should be some protection for students against profit gouging.

The SRC questions the powers outlined in s33. for TEQSA to potentially limit a university's authority to self-accredit.

The SRC recommends that a guarantee of academic freedom be inserted in the Act.

The SRC questions how s.136 provides for Ministerial direction.

We believe that universities should be open to the full range of quality audit and that given their status they should be significantly exceeding quality standards.

We are however concerned with the threat to academic freedom that is implied in s.33. In particular we are concerned with the possibility of the Minister making political decisions about course of study, or of TEQSA Commissioners being given direction by the Minister. We are aware that a past Minister of Education (Brendan Nelson) has attempted to influence whether particular degrees (at UCC) should be taught. Aside from this we have some concerns that a particular set of Commissioners appointed by the Minister would have political agenda in relation to teaching. We are not clear if s.136 provides sufficient protection for academic freedom and institutional autonomy.

The SRC recommends that s.36(4) be amended to reduce the period for renewing Registration from 7 to 5 years.

We welcome assurances (Bradley) that TEQSA would look at problems that might arise throughout the 7 year time period, but believe that a shorter time frame would provide greater examination of and self examination by providers, and greater protection to students.

The SRC recommends that only public universities created by an Act of the States or Commonwealth within Australia an which offer broad research informed teaching be able to define themselves as 'university' under s. 38. s.39 and s.41.



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We support strong limits on a provider's ability to define itself as a 'university'. We are concerned by the possibility of overseas 'universities'/providers running by franchises within Australia with cheap 'university' badged degrees. We believe that 'university' be a name only for institutions that are research intensive teaching institutions providing broad education (rather than narrow training).

Part 4

Accreditation Of Courses

THE SRC HAS NO COMMENTS ON THIS PART

Part 5

Higher Education Standards Framework

The SRC expresses strong in principal support for the use of Standards as outlined in s.58.

The SRC recommends that Standards not be established before full consultation with the key stakeholder - students.

We believe that Standards are an appropriate mechanism to be used in the sector.

We support the idea outlined in the Second Reading speech that "...TEQSA will require institutions to meet or exceed threshold standards in order to be registered to deliver higher education in Australia." (our emphasis)². A question arises how providers can best be encouraged or required to exceed standards.

We also believe there will need to be much more discussion of how these Standards are applied, whether they are minimum standards or standards that might carry greater expectations from universities and how they will be assessed to determine Registration. We recommend that the National Union of Students be consulted in the development of any Standards used by TEQSA.

We understand that 'in confidence' consultations have already been conducted for draft Provider Standards and await the release of the public draft. We are concerned that a new set of Standards could have progressed this far, in advance of the establishment of the Panel that was to have carriage of this process. We understand that these will be based on existing National Protocols. We are concerned that these do not provide sufficient regulation. The Provider Standard should cover all students and use elements of both the National Protocols and the ESOS Act and its National Code to deal with provisions for all students³.

We understand that there will be increased attention paid to arrangements involving teaching load partnerships between universities and private providers. We welcome that development⁴.

The SRC recommends the amendment of s.58 to include a Standard specifically dealing with Student Rights.

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http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;adv=yes;orderBy=priority;title;page=12;query=D ataset_Phrase%3A%22billhome%22%20ParliamentNumber%3A%2243%22;rec=2;resCount=Default

³ http://aei.gov.au/AEI/ESOS/NationalCodeOfPractice2007/National_Code_2007_pdf.pdf

⁴ <http://www.theaustralian.com.au/higher-education/muted-approval-for-draft-standards/story-e6frgcjx-1226010307709>



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We understand the draft Provider Protocol has section on 'Responsibilities to students'. It includes provisions on contractual arrangements, information, grievance procedures, meeting the needs of differing cohorts, progression risks, access to support, safety, advocacy services, student involvement in decision making and a statement of the rights and responsibility of students.

We believe that this should be extended and set out in a Standard specifically dealing with Student Rights.

This should include provision for Student Support services, and guarantees of 'Staff capability, educational resources and premises'.

There should be provision for independent advocacy (from student organisation staff), student representation that is democratically elected, and policy that refers not just to 'differing cohorts' but to equity and equal opportunity.

The SRC recommends the amendment of s.58 to include a Fairness Standard (incorporated in the Student Rights Standard) enshrining the principle that students should be treated fairly.

A Fairness standard is a requirement under s19-30 of the Higher Education Support Act

"s.19-30 Basic requirement

A higher education provider must treat fairly:

- (a) all of its students; and
- (b) all of the persons seeking to enrol with the provider."

The Government Administrative Information to Providers sets out guidance on this saying that providers should consider all the students circumstances:

"The application of fair treatment does not require that all students be treated the same. Fairness must be considered in the context of all the relevant circumstances. There are situations in which the fair treatment of students may result in students in different circumstances being treated differently."⁵

All students have common rights as students, but this is not always recognized in legislation or in the practice of universities. All students should access to the same Standards of educational provision, and as individuals they should have their particular circumstances taken into account when decisions are made.

A simple but important example is the right is to make a case for a refund of fees where a student is unable to complete due to circumstances beyond their control. Local (HECS) students and International students are treated differently, in that only local students have a formal procedure, a set of criteria that considers circumstances and appeal rights in relation to refunds. International students rely solely on the sometimes limited goodwill and discretion of providers.

The SRC recommends that s.58 be amended to include a common Appeal Standard (incorporated in the Student Rights Standard) that allows for procedural fairness and external appeal on the merits.

As an example, refunds of local student HECS fees are subject to a clear complaint/appeals procedure with rights to full appeals on the merits to the AAT. However appeal procedures under the ESOS Act in operation in

⁵ <http://www.deewr.gov.au/HigherEducation/Resources/Pages/AdminInfoForProviders.aspx>



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NSW only allows for limited appeal to the NSW Ombudsman. In practice this allows little scope for students to successfully appeal within a very narrow definition of cases where the University has operated in a way that 'no reasonable person could possibly have made such a decision'.

Appeals and complaints need to be seen as an important part of the quality framework that is the rationale for TEQSA.

The SRC questions what and how much will be covered by the Teaching and Learning Standards in s.58(1)(f), and what will be covered by the 'other standards' in s.58(e) and particularly s58(1)(h) relating to the 'quality' of higher education.

We ask the Committee seek more information from the Government.

Please also note our comments below on s.59 and s.60.

The SRC supports the compliance and quality (including thematic) assessment framework outlined in s.59 and s.60.

We support the use of assessments to identify 'systemic issues relating to a particular course of study' including those at universities.

We believe that it is important that TEQSA acts as more than a minimum standards agency focused on high risk providers. We support the idea that the Agency engaged in rigorous and regular thematic assessment of all universities. Where systemic quality problems arise they should be identified and named as such.

The SRC questions what involvement TEQSA has in making assessments that would affect Commonwealth funding in relation to quality.

Also unclear is how the Standards will operate to assess quality in relation to University Base Funding. This last Commonwealth Budget has outlined funding for quality but the mechanism is not defined.

Part 6 **Investigative powers**

The SRC supports TEQSA having full investigative powers as outlined in Part 6.

We see this Part as a clear sign that TEQSA will have more scope to investigate generally than AUQA.

Part 7 **Enforcement**

The SRC supports TEQSA having full enforcement powers as outlined in Part 7; subject to guarantees of academic freedom.



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We see this Part as a clear sign that TEQSA will have much more scope to deal with problems than AUQA. Mechanisms such as 'enforceable undertakings' are valid methods in our view in dealing with the protection of students. We remain concerned however that academic freedom be guaranteed.

Part 8 Tertiary Education Quality and Standards Agency

The SRC supports the functions and powers of TEQSA as outlined in Part 8.

The SRC supports these powers and responsibilities applying both in and outside Australia.

The SRC questions again in this context the capacity of the Agency to perform these powers within the proposed budget.

For example, we note the reference at s.134(3) to TEQSA performing its duties outside Australia. Australian universities have offshore campuses. We believe that students in these campuses have the same rights as students in Australia. We understand that AUQA has had limited capacity to audit these campuses because they did not have enough resources to do so properly.

The SRC questions again in this context the operation of s.136 in relation to the Minister's capacity to give directions, particularly in the context of their complete discretion to appoint Commissioners. We also question in what circumstances the Minister would give enforceable direction to the CEO of TEQSA as outlined in s.155.

Part 9 Higher Education Standards Panel

The SRC recommends that the Higher Education Standards Panel constituted in s.167 include as one of its members a representative from the National Union of Students.

The panel has the key role in developing Standards. As the peak representative body of higher education students NUS represents the key stakeholder in higher education teaching and learning; with the knowledge, expertise and position to understand students needs and the Standards they require.

Part 10 Administrative law matters

THE SRC HAS NO COMMENT ON THIS PART

Part 11 National register of Higher Education Providers

THE SRC HAS NO COMMENT ON THIS PART

Part 12 Miscellaneous

THE SRC HAS NO COMMENT ON THIS PART