

**RESPONSE TO  
TERTIARY EDUCATION QUALITY AND  
STANDARDS AGENCY BILL 2010  
EXPOSURE DRAFT 06/12/2010**



**1. INTRODUCTION**

- 1.1 This response follows from, and should be read in conjunction with, TAFE Directors Australia's (TDA's) earlier comments on the first exposure draft of the Tertiary Education Quality and Standards Agency (TEQSA) Bill 2010, dated November 25, 2010. It summarises the main points TDA wishes to emphasise following the second stakeholder consultation meeting on December 13<sup>th</sup> in Melbourne.
- 1.2 TDA commends DEEWR for the considerable progress achieved in the short time between the first and second drafts of the legislation and reiterates its appreciation of the open and receptive style of the consultation process adopted by DEEWR officials.
- 1.3 This response also provides further context to the submission TDA has already foreshadowed on the Draft Provider Standards, which will be forwarded by the due date of February 17, 2011.

**2. KEY POINTS OF EMPHASIS**

**2.1 Objects**

TDA welcomes the two changes to the Objects of the legislation:

- The enshrining in the legislation in 3(b)(ii) of the aim to regulate higher education *'in a proportionate way that recognises the risk associated with each higher education provider'* is critical and allays much of the concerns of universities and other publicly funded HEPs, namely TAFE Institutes, of the potential for an overly onerous regulatory environment.
- The inclusion of reference in 3(c)(iii) to protecting and enhancing *'excellence, diversity and innovation in higher education in Australia'* addresses the key points raised in TDA's ***Blueprint for Australia's Tertiary Education Sector*** (hereafter the ***Blueprint***) and subsequently in its initial response to the first draft of the Bill. TDA pointed out that the draft Bill did not reflect the existing strong evidence of an emerging diverse tertiary sector and was in danger of doing no more than further entrenching the status quo. TDA remains optimistic that it is indeed the intention of government to enable a genuinely diverse tertiary sector to evolve, despite the strong emphasis in the Bill on higher education, and that the use of the term 'Tertiary' in the title of the Bill will in time prove to have been visionary rather than illusory.

***Recommendation 1***

***TDA recommends that, in further drafting of the legislation, every attempt be made to facilitate the development a wide range of organisational types of higher education/tertiary providers.***

## 2.2 New Part 2 – Proportionate Risk-based Regulation

At the consultation meeting TDA challenged the wording of section 14(2), which refers to TEQSA, before making certain decisions, having regard to *‘the provider’s history of teaching and research’*. As it stands, this would tend to imply the singling out universities as a group for different treatment from all other HEPs. However, it is increasingly acknowledged that, although research capability is often cited as the distinguishing feature of universities, research output varies considerably between them with many universities in fact having only limited involvement in research. For example, regional universities received a mere 11% of all research income in 2007. Even among the more research intensive universities, only a very small percentage of staff is involved in the research activity/output in some instances.

### **Recommendation 2**

***TDA recommends that Section 2 of the legislation be amended to read:***

***14(2)(a)(i) ‘the provider’s history of teaching, scholarship and research’.***

Further, TDA notes that the interim Chair of TEQSA has announced that a project has been established to develop standards for teaching and learning and three projects will address research standards. Should recommendation 2 be accepted, further project work will be required.

### **Recommendation 3:**

***TDA recommends that the issue of standards for scholarship should also be addressed and that, in keeping with the aim of enhancing diversity and innovation, this should occur in such a way as to enable them to stand alone, that is, not necessarily be embedded in or tied to research standards. Standards for scholarship should also include how providers in practice ensure that Australia’s social and economic needs for a highly educated and skilled population are being met.***

## 2.3 TEQSA decisions where change relates to the use of the word university

TDA recognises that it would be untenable for TEQSA to have the power to unilaterally register a new, or de-register an existing university or to have certain other powers. Hence the legislation now refers to the requirement for TEQSA to consult with the States and Territories and/or MCTEE where the provider category permits the use of the word ‘university’. Sections 17(2)(b)(i), 18(2)(b)(i), 31(2), 34(5) and (6), 37(1) and (2) and 97(1) and (2) are all examples of this.

TDA wishes to highlight the fact that the same issue arises with those TAFE institutes that are also HEPs, since they are established under state legislation and would be subject to concern by the relevant State and Territory Ministers should certain TEQSA decisions appear to affect the standing of the institute concerned. The difference here is more between public and private HEPs than universities and all other HEPs, notwithstanding the small number of private universities.

During the consultations the universities have expressed their desire for what they perceive as the special role they play in the community to be reflected in the legislation. However, as highlighted in the **Blueprint**, TAFE institutes also have a special role to play with their broad educational mission and are ideally placed to deliver on the Government’s key policy drivers – quality, participation, student attainment, access and pathways – which will lead to improved national productivity.

#### **Recommendation 4**

***TDA recommends that the wording throughout the relevant parts of the legislation qualifying TEQSA's powers to make decisions be amended to read:***

***'... where change relates to the word university or the provider is established under State/Territory legislation'.***

## **2.4 Qualifications of TEQSA Commissioners**

At the stakeholder consultation meeting, a useful and thoughtful discussion occurred about the qualifications of Commissioners to be appointed to TEQSA. TDA maintains that, given the change from three to five Commissioners in the second draft, there is now scope for at least one of these Commissioners to have a background outside of the university or state regulatory experience.

In its response to the National VET Regulator legislation TDA argued for some overlapping of Commissioners between the two bodies to facilitate a consistent approach and potentially their ultimate integration. TDA reiterates this point and maintains that use of the part-time Commissioner role is an ideal way to achieve this end.

#### **Recommendation 5**

***TDA recommends that, as a minimum, one of the part-time TEQSA Commissioners have experience as a senior practitioner in the VET sector and have an overlapping role as Commissioner for the National VET Regulator.***

## **2.5 Alignment of Legislation for TEQSA and the National VET Regulator**

Given its membership, it is not surprising that TDA is particularly concerned about the issue of alignment between the two sets of legislation.

TDA notes that TEQSA has commenced a project on the development of an approach to regulating dual sector institutions, working in collaboration with the National VET Regulator and leading to the production of a discussion paper and consultation in 2011. It is understood that this project is aimed at ensuring a streamlined approach to regulation for dual sector universities. However, there are now many other HEPs operating in both sectors that equally deserve a streamlined approach and for which alignment of the two bodies would be a distinct advantage. TDA is therefore puzzled why there appears to be no project examining the ongoing issue of alignment *per se*.

#### **Recommendation 6**

***TDA recommends that an alignment project be initiated and its progress be the subject of ongoing communication to the Higher Education and VET sectors.***

### **3. SUMMARY**

With respect to further drafts of the legislation, TDA recommends that:

- 3.1** *In further drafting of the legislation, every attempt be made to facilitate the development a wide range of organisational types of higher education/tertiary providers.*
- 3.2** *Section 2 of the legislation be amended to read:*

*14(2)(a)(i) ‘the provider’s history of teaching, scholarship and research’.*
- 3.3** *The issue of standards for scholarship be addressed and that, in keeping with the aim of enhancing diversity and innovation, this should occur in such a way as to enable them to stand alone, that is, not necessarily be embedded in or tied to research standards. Standards for scholarship should also include how providers in practice ensure that Australia’s social and economic needs for a highly educated and skilled population are being met.*
- 3.4** *The wording throughout the relevant parts of the legislation qualifying TEQSA’s powers to make decisions be amended to read:*

*‘... where change relates to the word university, or the provider is established under State/Territory legislation’.*
- 3.5** *As a minimum, one of the part-time TEQSA Commissioners have experience as a senior practitioner in the VET sector and have an overlapping role as Commissioner for the National VET Regulator.*
- 3.6** *An alignment project be initiated and its progress be the subject of ongoing communication to the Higher Education and VET sectors.*

**Bruce Mackenzie,  
Chair  
TAFE Directors Australia  
December 2010**