



National Tertiary Education Union

Submission to the

Senate Education, Employment and Workplace Relations Committee *on the*

Tertiary Education Quality and Standards Agency Bill 2011

and the

*Tertiary Education Quality and Standards Agency (Consequential
Amendments and Transitional Provisions) Bill 2011*

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The National Tertiary Education Union (NTEU) represents the industrial and professional interests of about 25,000 staff employed at Australia's universities. We welcome the opportunity to make a submission on the Inquiry into the *Tertiary Education Quality and Standards Agency (Consequential Amendments and Transitional Provisions) Bill 2011* and the *Tertiary Education Quality and Standards Agency Bill 2011* conducted by the Senate Education, Employment and Workplace Relations Committee.

NTEU has been involved in the sector consultations held with the Department of Education, Employment and Workplace Relations and made a submission to the Department in relation to the Exposure Draft of the Bills.

As we have noted previously, NTEU agrees with the premise that the sector should have clear and strong standards that:

- a) set high entry barriers for all higher education providers,
- b) is consistent with a new quality focused regulatory system, and
- c) provides a basis on which higher education institutions can further develop quality and diversity.

Self Accreditation of Universities

We note that there have been a number of substantive improvements to the legislation since first released for sector consultation in November 2010. In particular, NTEU supports the removal of the ability of TEQSA to impose conditions or sanctions (including the removal of the title of 'university') without reference to natural justice or due process.

While this is positive, NTEU believes that the Bill remains flawed in a number of areas. First and foremost, while Part 1 Clause (2) (d) of the Bill infers [under paragraph (b)] the authority of a higher education provider to self-accredit courses of study (as part of the transitional provisions), the Bill fails to enshrine the self-accrediting status of certain higher education providers.

As a result, there are many questions as to how the conditions of the Bill will affect the self accreditation rights of universities. For example, with reference to the Bill (under Clause 4) NTEU wishes to know whether these conditions are directly applicable to universities and if so, will a university, as a self accrediting institution, be required to have all its courses accredited by TEQSA? That is, will the initial registration of a university, as a self-accrediting institution, require all of its courses to be accredited prior to registration or will being an existing university remove the requirement for TEQSA to accredit each of that institution's courses? While NTEU understands that each of the existing universities will not be required to have their courses accredited prior to registration, this is not made clear in the legislation in its current form. NTEU would also argue that the self accreditation status of universities is effectively removed because TEQSA would have the capacity to withdraw a university's accreditation to offer a certain course.

While NTEU understands that universities need to be accountable, the right of universities to self-accredit must not be compromised. The fundamental notion of the independence of universities, derived through statutory protection, and related principles of academic freedom, originate from the right to self accredit. Self-accreditation also defines what a

university is in the international context. To not recognise this fact within the Bill is problematic and rightfully raises speculation. We can only assume that details regarding university accreditation are to be delegated to the provider standards that are yet to be determined.

NTEU will continue to argue that it is critical for the legislation itself to recognise the unique status of universities. Such recognition does not lessen the importance of other providers of tertiary education such as TAFE colleges but in fact acknowledges that different types of providers in the higher education system, whether this be VET or universities, has distinct roles and functions. As such, NTEU believes the elements that define the different types of providers and afford them unique status should be recognised. NTEU's very strong preference is therefore for universities to be given legislative protection as self-accrediting institutions.

Related to our concerns over self-accreditation is the possible incorporation of the Australian Qualifications Framework (AQF) (*as per Clause 58 (5) Part 5 – Higher Education Standards Framework*). The National Qualification Frameworks within AQF are essentially descriptors of the national education system's structure and qualifications. Should these descriptors be adapted as regulatory tools for TEQSA then NTEU shares the concern of others in the university sector that the overly dogmatic nature of these descriptors may impair the self-accrediting status of universities. Furthermore, NTEU is highly concerned that *Clause 58 (5)* would allow the AQF to be incorporated into the TEQSA legislation without additional public consultation. It is essential that the qualifications standards be consistent with other standards. They should not be exempt from further public consultation.

Independence of TEQSA

The Union's concerns over TEQSA's independence from political influence remain, however, we recognise that the legislation has been amended to ensure independence of the higher education standards panel, and support the introduction of *Clause 170(2)* of the Bill which will now preclude any commissioner from sitting on the panel.

Panel Inclusion of the Interests of Staff

NTEU is highly disappointed that our previous recommendation to specifically have *regard to the interests of staff* (as well as students and the States and Territories) on the Panel (under *Clause 167(a)* and *(b)*) has not been adopted. In our previous submission, the Union recommended that *Clause 167 (2) (b)*, be amended to include a new subsection **(iii)**:

167 (2) (b)

(iii) staff working in higher education

We note that the outline of the Part in the *Explanatory memorandum* for the Bill notes that:

The Minister must also ensure that the Panel membership contains an appropriate balance of professional expertise and demonstrated expertise and that the interests of States and Territories and higher education students are represented on the panel.

As staff working in higher education have demonstrated expertise, and will largely be responsible for implementing any standards, NTEU finds it incongruous that staff would not have their voices heard in relation to development of these standards. Furthermore, NTEU believes it sends a negative message that the legislation, which creates the Regulator fails to explicitly recognise the role of staff working in institutions of higher education.

Investigative Powers of TEQSA

NTEU's concerns over the investigative powers of TEQSA also remain. In short, it is not clear from the extent of the investigative powers whether it is the role of TEQSA to regulate the sector or to police providers? If the former, NTEU believes that the investigative powers given to TEQSA in *Part 6* of the Bill are both excessive and disproportionate to TEQSA's roles and responsibilities.

While TEQSA is charged with the authority to review to the extent of determining whether the provisions of the Act relating to compliance and quality are being met by an institution, it is our understanding that existing or potential higher education providers must apply or re-apply to TEQSA to be registered and/or have their courses accredited. If at the time of registration or accreditation TEQSA believes a provider to be of high risk, then TEQSA has both the authority and obligation to impose conditions on that provider, noting that these conditions could include a requirement to provide relevant data and or information as requested. If a provider fails to comply with these conditions then clearly it would be in breach of its registration and the provider should have its licence to operate withdrawn. As such, it would seem that the burden of proof is on the provider, whereby if a provider is unable to provide the necessary evidence required by TEQSA then, it fails to comply and could not operate as a registered higher education provider. NTEU remains dissatisfied with the need for TEQSA to have the range of investigative powers provided in the Bill.

TEQSA and ESOS

While the *Explanatory Memorandum* to the Bill cites similar investigative powers under the Education Services for Overseas Students (ESOS) Act as justification for TEQSA's own proposed extensive powers, NTEU believes that if the purpose of TEQSA is to regulate, then its role differs significantly from the duties endowed on relevant officers through ESOS legislation. Under the ESOS Act, the relevant Department or Authority may be required to investigate complaints in relation to the treatment of a distinct group of students or an individual student's rights. This differs significantly to the duties of regulation and quality auditing what the TEQSA Bill deals with. As such, NTEU fails to understand under what conditions TEQSA would need the powers of search and entry, or to compel a person to give self-incriminating evidence in relation to standards or quality compliance issues. To the extent that TEQSA will be charged with enforcing the ESOS legislation, then the ESOS Act gives it the necessary powers of investigation in relation to those matters.

In relation to the *Tertiary Education Quality and Standards Agency (Consequential Amendments and Transitional Provisions) Bill 2011* (the C&T Bill) NTEU acknowledges that changes to the *ESOS Act 2000* are necessary to ensure that State and Territory powers and responsibilities, particularly in relation to registration and re-registration of courses, are transferred to a properly constituted regulatory agency.

In a number of previous submissions, NTEU has noted that the division of various responsibilities between State and Federal regulators has been a factor in placing the overseas student market at risk. Currently, State authorities hold significant responsibility in relation to registration and re-registration of courses, the regulation of the delivery of education programs, and enforcement against infringements of the Act and National Code.

In terms of the Consequential Bill, NTEU maintains that the following must be met:

- That the conditions imposed by various State and Territory regulatory bodies on education providers are assumed through TEQSA,
- That TEQSA is properly resourced to integrate State and Territory accreditation and regulatory functions (particularly in relation to VET providers), and
- That the legislation enables a regulatory framework in which the delineation between State and Federal responsibilities is clear.

NTEU supports the establishment of a regulatory authority for higher education that works in the public interest and emphasises accountability and transparency. However, this must be balanced with recognition of the independence of universities, charged with the role of promoting academic freedom and critical inquiry.