



TEQSA Amendment Bill 2014

Submission to the inquiry



Key Points:

- The Group of Eight (Go8) supports the principle of a national regulator, overseeing a strong and effective regulatory regime.
- The intent in creating TEQSA was to establish an approach of risk-based regulation against minimum standards. It was supposed to focus on higher risk providers, while ensuring existing low-risk providers were not unnecessarily burdened.
- While the policy principles and legislative basis were sound, actual regulatory activity over the first two years of TEQSA's existence regularly departed from this model.
- The Group of Eight (Go8) supports a risk-based approach to higher education regulation, based on assuring minimum standards and acting promptly against providers who fail to meet these. Any other approach is inefficient, ineffective and potentially harmful to an industry that is Australia's fourth largest export, following just iron ore, coal and gold.¹
- The proposed amendments to the TEQSA Act follow the recommendations of *Review of Higher Education Regulation* conducted by Kwong Lee Dow and Valerie Braithwaite, which received strong and widespread support across the sector.²
- Therefore the Go8 supports the implementation of the Amendment Bill, as outlined below.

Background: TEQSA and Regulation

The Explanatory Memorandum to the proposed Tertiary Education Quality and Standards Agency Amendment Bill 2014 states that:

The purpose of the Bill is to amend the Tertiary Education Quality and Standards Agency Act 2011 (TEQSA Act) to give effect to the Government's decision to implement recommendations arising from the independent *Review of Higher Education Regulation* (the Review).³

The Review, conducted by Lee Dow and Valerie Braithwaite, was commissioned in May 2013 and was released to the public in August of the same year.

Proposed Amendments to the TEQSA Bill

As stated above, the Go8 supports a strong, risk-based regulatory framework, measured against minimum standards. As such, we support the proposed amendments, which are designed to "impact directly on the functioning of TEQSA; [and] not alter the substance of the TEQSA Act".⁴ We support the findings of the well-received Lee Dow and Braithwaite Review, and commend the government on moving to see them implemented. We believe they will help

¹ <https://go8.edu.au/publication/international-students-higher-education-and-their-role-australian-economy>

² Universities Australia, <https://www.universitiesaustralia.edu.au/news/media-releases/University-regulation-streamlining-should-be-expedited#.U1iRaVc5pco>

³ Explanatory Memorandum, 2014, p.4

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http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bId=r5175

to create a strong sector without placing unnecessary burdens on low-risk providers, as laid out in the section below.

1. Quality Assessments of Higher Education Providers and the Delegation of Decisions

The Go8 supports the amendment to remove the current quality assessment function of TEQSA. This amendment recognises the findings of the Regulatory Review that “[m]ost higher education institutions have a long history of achievements before TEQSA’s establishment”⁵.

The Review noted that ‘universities and higher education providers have their own norms, values and processes that together create a “scholarly culture” with as much regulatory punch as any demands imposed from outside’. It was further noted that ‘all higher education providers are highly attuned to the importance of reputational capital ... and therefore develop effective internal regulatory mechanisms to ensure provision of quality higher education’.⁶ Indeed, it goes on to say, that:

On this question both Universities Australia (UA) and the Group of Eight (Go8) argue that quality assurance should rest primarily within the institutions themselves. What is persuasive in this argument is the recognition that it is within institutions, and indeed within their component faculties, schools and departments that the commitment to quality must take root and be sustained.⁷

The regulator’s job is to assure minimum standards, and to act promptly and decisively against providers who fail to meet these. Any other approach is bound to be inefficient and ineffective. Activities that do not observe these principles interfere unnecessarily and harmfully in the operations of reputable, high quality providers, while failing to deal effectively with risky, low quality providers. An approach that is not based on risk burdens providers unfairly and unnecessarily while also distracting TEQSA from its principal purposes, namely regulation and ensuring that the minimum standards are met.

The Go8 also supports the move to greater delegation within TEQSA. Go8 universities’ dealings with their TEQSA case managers and other line staff have generally been positive and constructive. Case managers have generally been helpful, constructive and keen to learn. The problem seems to be that case managers (and other staff) have very little authority to make decisions, and must wait for matters to be progressed to Commissioner level. This has resulted in further delays. Empowering staff within the Agency should go a long way to addressing this issue. It should also encourage a higher level of transparency in decision making, the latter of which is important to ensure a sector-wide consistency of approach.

2. Extending periods of accreditation or registration

An expanding and diversifying higher education sector needs a strong and effective regulatory regime. This regime must include a national regulator. However, it is vital that higher education regulation operate in an efficient and streamlined way and avoid heavy-handed, overly bureaucratic and one size fits all approaches. Most importantly, regulation

⁵ Lee Dow and Braithwaite, 2013, p.57

⁶ Lee Dow and Braithwaite, 2013, pp.17-18

⁷ Lee Dow and Braithwaite, 2013, p.41

must proportionate to risks to the quality and reputation of the Australian higher education sector posed by different providers.

Allowing TEQSA the discretion to extend periods of accreditation or registration is entirely consistent with these principles. Mandating a specific timeframe is always partly arbitrary, no matter what that timeframe might be. The Explanatory Memorandum to the Amendment Bill notes that this change would assist to bring the processes of provider registration and course accreditation into line, however it is not difficult to see the potential for further benefits. Registration and re-registration processes are resource intensive for both Agency and provider, and potentially wasteful if repeated unnecessarily often. Giving TEQSA the capacity to set an appropriate timeframe that is specific to the circumstances and level of risk of a particular provider is a much more efficient and effective approach.

3. The appointment of commissioners

The Go8 does not have a particular position on this amendment. However, it seems sensible to allow the flexibility to appoint Commissioners on a needs basis, rather than follow an arbitrary number as enshrined in legislation.

4. Notifying providers of decisions; the scope of ministerial directions

The changes to the Act as summarised in the Explanatory Statement are:

- To remove the need for TEQSA to provide reasons where it approves an application for a particular provider category
- To remove the need for TEQSA to provide reasons for the decision to vary or revoke a condition in circumstances where the variation or revocation is the outcome being sought by the provider in its application
- To require TEQSA to give a provider a written notification within 30 days of a decision to impose a sanction under sections 99, 100 or 101, including the reasons for the decision.

The Go8 feels these are sensible amendments that will assist the efficient operations of the national regulator.

Conclusion

A strong higher education sector is critical to Australia's future, both in terms of its contribution to the economy as its fourth largest export industry, and in its capacity to underpin a 21st century knowledge economy through high quality research and education. An effective national regulator is critical to ensuring the longevity and effectiveness of the sector, but only if its activities and processes are in themselves of high quality and fit for purpose, and do not impose unnecessary and burdensome processes on low-risk providers which have been found to "already have robust internal processes to ensure quality".⁸

The proposed amendments are based on the findings of the *Review of Higher Education Regulation*, which received widespread support across the sector. As noted by Universities Australia: "the fact that all parts of the higher education sector have expressed broad support

⁸ Explanatory notes to the Tertiary Education Quality and Standards Agency Amendment Bill.

for the reforms should provide the Committee with a degree of reassurance on the merits of the amendments".⁹

The Go8 therefore supports the implementation of the Amendment Bill.

⁹ <https://www.universitiesaustralia.edu.au/news/media-releases/University-regulation-streamlining-should-be-expedited#.U1iRaVc5pco>

Reference List

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