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Mr Tim Watling
Committee Secretary
Senate Standing Committees on Education, Employment and Workplace Relations
PO Box 6100
Parliament House
CANBERRA ACT 2600

Email: ewer.sen@aph.gov.au

Dear Mr Watling

Re: Inquiry into the Tertiary Education Quality and Standards Agency Bill 2011

I write in response to your letter dated 25 March 2011, inviting submissions to the inquiry into the Tertiary Education Quality and Standards Agency (TEQSA) Bill.

The University of Adelaide agrees with the position of Universities Australia and the Group of Eight which supports consistent national regulation of higher education in Australia and broadly endorses the proposed TEQSA legislation. It is the University's view that developments in higher education in Australia need to take into account the fact that universities operate in a global context. As such, the importance of the self-accrediting status of universities cannot be stressed enough and this authority should be made explicit in the Bill. The legislation as it currently stands potentially allows the Commonwealth Government to intrude into matters of curriculum, assessment, awards and research. It effectively overrides the autonomy that is central to universities' status, and which is conferred by universities' establishment Acts. We therefore propose that self-accreditation be defined as the normal condition of universities in the primary legislation. This would not prevent action by TEQSA to limit the self-accrediting authority of a university in respect of a particular course, where a university had failed to take rectifying action. However, universities should be exempt from the requirement to seek to have their self-accrediting powers renewed by TEQSA, as self-accreditation should be an intrinsic element of their registration as universities. We therefore propose that a statement confirming this should be included in the establishment legislation for TEQSA.

Another matter of concern to the University is that the transition legislation does not provide for consultation between TEQSA and an existing higher education provider in relation to the provider category in which it will be registered commencing at the transition time. A process for consultation and provision for making representations before the transition time should be included. Of further concern is the fact that the schedule for re-registration is based on the previous schedule of the Australian Universities Quality Agency audits with no regard given to the stated principle of applying a risk-based approach to regulation. It seems overly prescriptive to include a schedule of re-registration specifying the month of re-registration in legislation and not provide for a process of negotiation to amend this if a provider is deemed to be low-risk.

In addition to the matters already mentioned the University had previously provided the following detailed comments on the Tertiary Education Quality and Standards Agency Bill 2011 to DEEWR:

Part 1 – Introduction

- Section 4 “Simplified outline”: The simplified outline of the bill should reflect the self-accreditation status of certain providers. The outline currently only mentions TEQSA in regard to registration of providers and accreditation of courses.
- Section 5 “Australian higher education award”, “overseas higher education award”, “higher education provider” and “regulated entity”: There is a Constitutional gap in that these definitions do not apply to a person who is not a corporate but who conducts relevant activities in a State. These people will not be regulated by this legislation.
- Section 5 “provide a course of study”: This definition is a closed list of methods by which a course may be delivered. It may be preferable for it to be an “inclusive” or “open list” so that future methods of delivery can be included.
- Section 6: What is the effect of sub-section (3)? If an award is made jointly by an Australian provider and a foreign provider, to what “extent” will the award be a “regulated” award. It is not clear what the words “to the extent that” mean in the context of conferring an award. This section needs further consideration to convey more clearly what is intended.
- Section 9: Paragraph (1) needs reconsideration. An entity should only be relieved of complying with State and Territory laws regulating the provision of higher education if it is a registered higher education provider under this Act. An entity should not be providing higher education unless and until it is registered under this Act, so paragraph (1)(b) should be deleted and paragraph (1)(a) should be amended to refer to “a registered higher education provider”.
- Section 9: Paragraphs (2) and (3) do not clearly preserve the University of Adelaide Act, which legislation does more than merely establish The University of Adelaide. The University of Adelaide Act is for “continuance, administration and other purposes”. This legislation needs to be preserved in its entirety and, if section 9 remains as is, will need to be specified in the regulations as a whole.

Part 2 – Basic principles for regulation

- Section 15: The references to “other laws” in sub-paragraph (a)(iv) should be extended to include laws which applied prior to the application of this Act. In the early years, an entity’s history of compliance will need to be assessed against compliance with previously applicable laws regulating higher education.
- Section 17: This section should also provide that Part 2 applies to “each Commissioner”. Although TEQSA is, under section 133, constituted of 5 Commissioners, it is important that Part 2 applies to decisions made by each Commissioner individually and separately in the same way as it is expressed to apply to each authorised officer.

Part 4 – Accreditation of courses of study

- Section 56: Sub-sections which are equivalent to sub-sections 36(5), (6) and (7) (in relation to renewal of registration) should be inserted into section 56 to provide for the making, and mandatory consideration, of representations by the provider if TEQSA proposes to make a decision to reject a provider’s application for renewal of the accreditation of a course.

Part 5 – Higher Education Standards Framework

- Section 58: The Bill gives the Minister the ability to create any other standards against which higher education providers and the quality of higher education can be assessed. If this clause is to remain in the Bill it should be bounded such that the need for additional standards has been demonstrated and the sector consulted.
- Section 62: Sub-section (4) is potentially very broad. It means that the TEQSA review and examination powers in section 59 and 60 may extend to a provider’s operations which have no (or only a tenuous) connection with the provision of higher education (for example: commercial, and potentially commercially sensitive, operations undertaken by the

commercialisation arms of universities; commercial farming operations; and medical or dental practices). Further consideration should be given to whether sub-section (4) is necessary or appropriate at all, or at least whether it should be limited in its application.

Part 7 – Enforcement

- Sections 99 and 100: Provisions equivalent to sub-sections 101(2), (3) and (4) (in relation to cancelling registration) should also be inserted into section 99 (in relation to shortening or cancelling accreditation of a course) and section 100 (in relation to shortening the period of a provider's registration). Shortening a period can have the same effect as a cancellation. Cancelling the accreditation of courses can have the same effect as cancelling the registration of a provider. Providers should be entitled to make representations and TEQSA should be required to consider them, in all of these circumstances, not just in the case of cancelling registration.

I hope that the comments provided will assist in creating a regulatory framework which is consistent with the principles of regulatory necessity, risk and proportionality as stated in the legislation.

Yours sincerely

PROFESSOR JAMES A. McWHA
Vice-Chancellor and President

cc Deputy Vice-Chancellor and Vice-President (Academic)