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REF: IRY/le/L.114.DOC

11 April 2011

Committee Secretary  
Senate Education, Employment and Workplace Relations Committees  
PO Box 6100  
Parliament House  
Canberra ACT 2600  
Australia

Thank you for the opportunity to comment on the Tertiary Education Quality and Standards Agency (Consequential Amendments and Transitional Provisions) Bill 2011 and the Tertiary Education Quality and Standards Agency Bill 2011.

The views of ANU continue to be as I wrote to Mr Hazlehurst last month, and I attach that letter to contribute to your considerations.

Yours sincerely

  
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10 March 2011

REF: IRY/tnd/L.079.DOC

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Dear David

The Australian National University (ANU) is pleased that the draft TEQSA legislation has been released for public comment, and we welcome the Minister's announcement that the Bills will be referred to the Senate Committee on Education, Employment and Workplace Relations for further consideration. ANU apologises for the tardiness of our comments on the draft Bill. We do believe, however, that our comments are pertinent and worth the Commonwealth's consideration in framing the next draft.

ANU endorses the Group of Eight (Go8) view of the need for more prominent recognition of the self-accrediting authority and status of universities. While a level playing field is a worthy object for higher education, this is not best achieved by reducing the status and autonomy of current leading players in the sector, i.e. universities.

ANU also endorses the Go8 views on the potential risk of intrusion into "... matters of curriculum, assessment, awards and research." Notably, the *Australian National University Act 1991* (the Act) has sections which provide for exemptions from sections of the *Commonwealth Authorities and Companies Act 1997* which would otherwise reduce the academic independence or integrity of the university.

Of particular concern to ANU, there are requirements on the ANU Council and Officers of the university under the Act are to "... act in all matters concerning the University in the way it thinks will best promote the interests of the University." There is risk under the current draft of the TEQSA legislation that Council may be compelled under threat of statutory and civil penalty by TEQSA (Part 6, Investigative Powers and Part 7, Enforcement) to act in a manner they (Council members or Officers) could believe to be detrimental to the best interests of the university. This could give rise to a clear conflict of duties for Council and ANU Officers. ANU believes that it is important to get clarification of the relationship between the TEQSA legislation and the (ANU) Act in order for Council and Officers to properly respond to requests from TEQSA where they may perceive a conflict of duties. This is an area where ANU believes its situation to be different to other Australian universities due to being constituted under an Act of the Federal Parliament.

ANU also welcomes the inclusion in the draft TEQSA legislation of the principles of regulatory necessity, risk and proportionality. Because these principles are recognised in the legislation, unreasonable actions of TEQSA will be appealable in the Federal Court.

However, there are a couple of areas where ANU disagrees with the Go8. One of these is in the call for definition of the terms *standards-based* and *standards*. Definition of these terms will likely be pushed towards those prevalent in standards organisations such as the International Standards Organisation (ISO) or the Australian Standards Organisation (ASO). While ISO and ASO standards may be wholly appropriate to engineering, pharmaceutical and/or manufacturing organisations, they do not translate effectively to the qualitatively nuanced environment of higher education where quantitative concepts such as positive and negative tolerances are neither meaningful nor sensible. These terms need to be intelligible to the general population for their application to universities to have any long term credibility and, so, must move with the time and tide of language change.

ANU is concerned that monitoring based upon *risk profile* not be interpreted to lead to *risk* being interpreted narrowly along the lines of prudential approaches to *risk profiling* which emphasise *impact* over *probabilistic* elements: that is, how bad a failure would be for the system as well as the likelihood of such a failure occurring. Such narrowly prudential interpretation could make leading universities an undue focus of regulatory attention.

ANU would appreciate the opportunity to work with the Commonwealth to prepare amendments to the legislation that address these issues. Ideally, this would occur before the legislation is introduced to Parliament. If that is not possible, however, then we look forward to working with the Government and the Parliament to achieve a regulatory framework, which: guarantees the quality of Australian higher education; ensures that the principal legislation provides that the autonomy of Australia's self-accrediting universities can only ever be constrained through demonstrably fair and transparent processes; and that the ANU does not find itself disadvantaged by virtue of being the national university.

Regards

Professor Ian Young  
Vice-Chancellor and President