

AUSTRALIAN RESEARCH COUNCIL

# Submission

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To the Senate Standing Committee on  
Education Employment and Workplace  
Relations (Legislation)

*Inquiry into The Tertiary Education Quality and Standards Agency Bill 2011 and  
the Tertiary Education Quality and Standards Agency (Consequential  
Amendments and Transitional Provisions) Bill 2011*

April 2011

## **AUSTRALIAN RESEARCH COUNCIL SUBMISSION (ARC)**

### **TO THE SENATE STANDING COMMITTEE ON EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS (LEGISLATION) INQUIRY INTO:**

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

### **EXECUTIVE SUMMARY**

#### **The ARC supports the passage of the TEQSA legislation**

The ARC supports the passage of the TEQSA legislation and the principle of one national independent body to regulate higher education providers. Such a body has the potential to reduce the burden of regulation on providers by centralising and streamlining regulatory processes, while ensuring that standards are enforced where required. In the ARC's view, the legislative framework provided by the TEQSA legislation will help ensure that these benefits are realised

The ARC views the TEQSA legislation as an important part of the Government's reform agenda for higher education, *Transforming Australia's Higher Education System*, which seeks to transform the scale and quality of the nation's universities. Such a transformation requires one national independent body to regulate providers, in order to ensure the integrity and stability of the system in a period of significant expansion and change.

#### **The ARC supports the principle of shared Ministerial responsibility for TEQSA**

The ARC supports the principle of Ministerial responsibility for TEQSA being shared between the Minister for Tertiary Education, Skills, Jobs and Workplace Relations and the Minister for Innovation, Industry, Science and Research. In particular, the ARC supports the definition and role of the Research Minister enshrined within the TEQSA legislation. The Research Minister is defined as the Minister administering the *Australian Research Council Act 2001*, and is responsible for setting the research standards that TEQSA administers. The Research Minister must be consulted before key appointments are made under the legislation and before other standards are set.

These provisions are vital because the ARC is responsible for providing advice to the government on higher education research matters and with implementing the Excellence in Research for Australia initiative, which evaluates the quality of higher education research on a discipline by institution basis. As such, the ARC has an important role to play in ensuring that TEQSA's new regulatory and quality arrangements effectively encourage and support the conduct of quality research in Australian higher education institutions. The ARC can most effectively fulfil this role by providing advice to a Minister who is responsible both for setting the Research Standards administered by TEQSA and for research funding and policy.

## **1. THE AUSTRALIAN RESEARCH COUNCIL**

The Australian Research Council (ARC) is an independent agency established under the *Australian Research Council Act 2001* (ARC Act), within the Innovation, Industry, Science and Research Portfolio. The ARC's total budget for 2010-11 is \$751.9 million.

### **1.1. ARC programs**

The ARC is responsible for managing the National Competitive Grants Program (NCGP), developing and implementing the Excellence in Research for Australia (ERA) initiative and providing advice to the Australian Government on research matters. The NCGP comprises a range of research funding schemes which support research projects, postgraduate awards, fellowships, infrastructure and centres. Funding under the NCGP is awarded competitively on the basis of peer review.

### **1.2. The Excellence in Research Initiative**

The ERA initiative assesses research quality within Australia's higher education institutions using a combination of indicators and expert review by committees comprising experienced, internationally-recognised experts.

ERA outcomes inform the allocation of funding to support the indirect costs of research through the Government's Sustainable Research Excellence (SRE) program, and will also inform the funding of research education through a modified Research Training Scheme (RTS). ERA will be included as a key measure of research performance in the Government's compacts with universities. It also informs the development of the Government's Research Workforce Strategy and other initiatives related to research and research training.

## **2. THE TERTIARY EDUCATION QUALITY AND STANDARDS AGENCY**

The Australian Government is establishing a new national regulatory and quality agency for higher education, the Tertiary Education Quality and Standards Agency (TEQSA).

### **2.1. TEQSA will be an independent national regulator for higher education**

TEQSA is to be established as an independent body with powers to regulate university and non-university higher education providers, monitor quality and set standards. Its primary task will be to ensure that students receive a high quality education at any of Australia's higher education providers.

TEQSA will register providers, carry out evaluations of standards and performance, protect and assure the quality of international education and streamline current regulatory arrangements. It will join together the regulatory activity currently undertaken in the states and territories with the quality assurance activities currently undertaken by the Australian Universities Quality Agency.

### **2.2. The TEQSA Legislation**

The *Tertiary Education Quality and Standards Agency Bill 2011* (the Principal Bill) establishes TEQSA as a new national regulatory and quality assurance mechanism for Australian higher education. The Principal Bill and the *Tertiary Education Quality and Standards Agency (Consequential Amendments and Transitional Provisions) Bill 2011* form the TEQSA legislation. In this submission, all references to clauses are to clauses in the principal bill.

### **2.3. The ARC supports the principle of an independent national regulator**

The ARC supports the principle embodied in the TEQSA legislation of one national independent body to regulate higher education providers and assess the quality of higher education. The ARC is of the view that such a body should be of benefit to the sector. It has the potential to reduce the burden of regulation and quality assessment on providers by centralising and streamlining regulatory and assessment processes, while simultaneously ensuring that standards are consistently applied and enforced where required.

### **2.4. TEQSA and the Government's higher education reform and innovation agendas**

TEQSA is a key initiative of the Government's reform agenda for higher education, *Transforming Australia's Higher Education System*, which will transform the scale and quality of the nation's universities. The ARC believes that such a transformation requires one national independent body to regulate providers and assess quality, in order to ensure the integrity, stability, flexibility and quality of the system in a period of significant expansion and change.

TEQSA is also important to the Government's innovation agenda, *Powering Ideas*, which places a high priority on ensuring that public funding supports high quality research. The minimum standards for higher education providers administered by TEQSA will help achieve this objective. The Minister for Innovation, Industry, Science and Research has indicated that tertiary research will be as central to TEQSA's work as tertiary education.

*Powering Ideas* also recognises the importance of ERA as a tool for measuring the quality of research and for guiding the allocation of resources by enabling the Commonwealth to link funding to research performance. The Minister for Innovation, Industry, Science and Research has indicated that ERA will underpin the new minimum standards for higher education research administered by TEQSA, while recognising that such standards are only one part of a broader strategy to drive improvement in higher education research performance.

## **3. THE LEGISLATIVE FRAMEWORK FOR TEQSA**

TEQSA, once established, will regulate and evaluate the performance of higher education providers against a new Higher Education Standards Framework.

### **3.1. The Higher Education Standards Framework**

Under the TEQSA legislation, Higher Education Standards will be made by the relevant Minister, on the advice and recommendations of the Higher Education Standards Panel. The Panel will be independent of TEQSA. When making a decision about the registration of higher education providers, TEQSA must take into account a subset of the Higher Education Standards, known as the Threshold Standards.

TEQSA is also empowered to undertake assessments of the quality of the higher education offered by providers. Quality assessments can address systemic issues, as well as issues with particular providers. Quality assessments may be undertaken against any of the Higher Education Standards, including Research Standards.

Under the TEQSA legislation, TEQSA is an independent agency governed by Commissioners. It can only be subject to Ministerial direction if the Minister considers this necessary to protect the integrity of the higher education sector. The Minister is prohibited from giving any direction about the regulation of a particular provider but such regulation is subject to review by the Administrative Appeals Tribunal.

The TEQSA legislation also enshrines basic principles that must govern TEQSA's approach to regulation. These principles are designed to ensure that TEQSA's approach to regulation is proportionate and risk based, and does not burden any higher education provider more than is reasonably necessary.

### **3.2. The ARC views this legislative framework as appropriate and balanced**

In the ARC's view, this legislative framework should help ensure that the potential benefit of TEQSA to the higher education sector is realised. In particular, the legislative framework balances the need for TEQSA to reduce the burden of regulation and quality assessment on providers by centralising and streamlining regulatory and assessment processes, with the need for TEQSA to ensure that standards are consistently applied and enforced when necessary.

The ARC believes that the proportionate and risk-based approach to regulation is appropriate for TEQSA. TEQSA will primarily be concerned with the administration of *minimum* standards, and as such, should not take an overly interventionist approach in relation to providers whose offerings are well established and known to be of reasonable quality. The Government has other tools at its disposal with which to drive improvements and sustain excellence in higher education, beyond compliance with minimum standards. In the case of higher education research, these include:

- The Australian Research Integrity Committee, which investigates concerns that institutions have not followed the *Australian Code for the Responsible Conduct of Research (2007)*, jointly administered by the ARC and the National Health and Medical Research Council.

- The NCGP and ERA, both administered by the ARC;
- The Joint Research Engagement Scheme, which provides block grants to universities, with an emphasis on encouraging and supporting collaborative research;
- The Sustainable Research Excellence program, under which universities can receive additional, conditional funding for the indirect costs of research;
- The Research Training Scheme, which funds universities for the costs of providing places to domestic students doing higher degrees by research; and
- Mission-based compacts with universities, which define each university's particular mission and facilitate the distribution of performance-based funds.

#### **4. SHARED MINISTERIAL RESPONSIBILITY FOR TEQSA**

The TEQSA legislation provides that the Minister for Tertiary Education, Skills, Jobs and Workplace Relations (“the Minister” for the purposes of the legislation) share some of the responsibility for TEQSA with “the Research Minister”. The Research Minister is defined (in clause 5) as the Minister administering the *Australian Research Council Act 2001*. Currently, the Research Minister is the Minister for Innovation, Industry, Science and Research.

##### **4.1. Specific legislative provisions enshrine shared responsibility**

Specifically, the legislation provides that the Minister consult with the Research Minister prior to appointing the TEQSA Chief Commissioner and other TEQSA Commissioners (clauses 138 & 147) and prior to appointing the Members and the Chair of the Higher Education Standards Panel (clauses 167, 170 & 179).

The Minister is responsible for making the Standards (other than the Research Standards) but must consult with the Research Minister before making such standards (clause 58). The Research Minister is responsible for making the Research Standards but must consult with the Minister before making Research Standards (clause 58).

The Higher Education Standards Panel is to advise and make recommendations to the Minister or the Research Minister on matters pertaining to the Standards (including the making and varying of the Standards) on its own initiative or at the request of the appropriate Minister (clause 168).

##### **4.2. The ARC endorses the shared responsibility approach in the legislation**

The ARC endorses this shared responsibility approach. More specifically, the ARC supports the definition and role of the “Research Minister” within the Bill, as it ensures that the Minister who has responsibility for research policy and funding also has responsibilities in relation to TEQSA. In particular, and for the same reason, the ARC supports the decision to give the primary responsibility for Research Standards to the Research Minister.

These provisions are vital because the ARC is a key agency charged with providing advice to the government on research matters. As such, it has an important role to play in ensuring that TEQSA's new regulatory and quality arrangements effectively encourage and support the conduct of quality research in Australian higher education institutions.

The ARC can most effectively fulfil this role by providing advice to a Minister who is responsible for both the ARC and the Research Standards administered by TEQSA. The ARC notes that the Research Minister can request advice and recommendations from the Higher Education Standards Panel on matters relating to the Research Standards. This provides a link between the ARC and the Panel's deliberations, in that it allows the Minister to request advice and recommendations from the Panel on matters raised by the ARC.

The ARC also believes that it is appropriate that the Research Minister be consulted before members of the Higher Education Standards Panel are appointed in order to ensure that the panel includes members who have the necessary experience to make recommendations regarding Research Standards for Higher Education.

## **5. THE ARC AND TEQSA REGULATION AND QUALITY ASSESSMENT**

The ARC has been working with the Department of Education, Employment and Workplace Relations (DEEWR), through the Department of Innovation, Industry, Science and Research (DIISR), on the development of TEQSA, and in particular the development of the Research Standards.

### **5.1. ERA and the Research Standards**

The Minister for Innovation, Industry, Science and Research has indicated that ERA data will be used to benchmark the Research Standards used by TEQSA in its assessments of quality in higher education.

The ERA initiative identifies and examines the quality of research across the full spectrum of research activity in higher education institutions. It is a key element of the Government's agenda for the reform of Australia's higher education system, articulated in *Transforming Australia's Higher Education System* (2009), and its innovation agenda, expressed in *Powering Ideas: An Innovation Agenda for the 21<sup>st</sup> Century* (2009).

ERA reflects the Australian Government's commitment to a transparent, streamlined approach to the evaluation of the quality of research undertaken in Australia's universities and provides rich information about research quality and where Australia's research effort stands in relation to the rest of the world.

As the lead agency for ERA, the ARC is responsible for ensuring that ERA data is used appropriately in the context of the Research Standards administered by TEQSA. The relevance of ERA data to the Research Standards underscores the importance of

ensuring, within the TEQSA legislation, that one Minister is responsible for both the Research Standards and the ARC.

## **5.2. The Threshold Standards will also address research-related matters**

The Government has indicated that the new Provider Standards will initially be based upon the existing *National Protocols for Higher Education Approval Processes* (the National Protocols). There are likely to be standards contained within the Provider Standards that relate specifically to research. For example, the Provider Standards may specify that research carried out under the auspices of the provider must meet appropriate codes of conduct, safety and ethics, consistent with legislative or other regulatory requirements. In addition, the Provider Standards may specify that universities must undertake research within a minimum number of fields and must also undertake research in those fields in which Research higher degrees are offered.

As the National Protocols are translated into the new Provider Standards, ERA data could be used to inform some of the assessments that may be required to determine whether a provider meets those parts of Provider Standards that relate to research. For example, ERA data may be relevant to how a field of research is defined, to the minimum volume and quality of research that a university should produce within a given field, and to how the quality of such research is defined.

Similarly, the *Australian Code for the Responsible Conduct of Research (2007)* was developed jointly by the National Health and Medical Research Council (NHMRC), the ARC and Universities Australia. The ARC and the NHMRC also jointly administer the Australian Research Integrity Committee, which investigates concerns that institutions have not followed the code. This experience could also be drawn upon as the National Protocols are translated into the Provider Standards.

The Provider Standards will form part of the new Threshold Standards, and therefore, over time, will have direct implications for the regulation of providers and courses, unlike the Research Standards. The fact that the Provider Standards will include standards that relate specifically to research lends support to clause 58, which requires that the Research Minister be consulted before the Minister makes Threshold Standards, including the Provider Standards. This will allow the ARC to have input into the development of the Threshold Standards through the ARC's portfolio Minister.