Monash University
Submission to the Senate Inquiry

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

1. Comments on the *Tertiary Education Quality and Standards Agency Bill 2011*

Part 1 – Introduction

Section 3, Simplified Outline makes no reference to the principles relating to regulatory necessity, risk and proportionality. These are included in the Objects and should be added to the simplified outline, as a significant part of the Act.

Part 2 – Basic principles for regulation

Monash University supports the inclusion of the basic principles for regulation as outlined in Part 2

Part 3 – Registration

The University is concerned about self-accrediting status as it has historically applied to universities and how this is now framed in the draft legislation. Further clarification of Parts 3 and 4 of the legislation and the relationship between institutional registration as it applies to the University and the ongoing power to self-accredit courses is needed. Monash supports the submissions made by both Universities Australia and the Group of 8 in respect of this issue. We would like to see enhanced statements around university status and the attributes that apply to such institutions including the power to self-accredit courses. The University is pleased to see the inclusion of basic principles of regulation in Part 2 but it remains unclear how these will be applied to issues concerning accreditation of courses within universities. The University community is concerned about any forms of intervention that may undermine institutional autonomy. The academic independence of universities must be protected. Further clarification of how the principles and accreditation will operate would alleviate these concerns.

Application for self-accrediting status for "one or more courses of study" appears in the Bill (section 41, p.34) and the separate course accreditation sections explicitly apply only in relation to a course of study if the provider is not authorised to self-accredit the course of study (Section 45, p36). In other words, there is no recognition or no adequate recognition in the Bill of a status of general self-accreditation authority such as the Universities currently have, rather than an authority on a course by course basis. Monash supports Universities Australia and the Group of 8's position that a university which is properly registered should have automatic self-accreditation authority for all of its courses of study. There is already a category of higher education provider (mostly universities but some private providers) approved to self-accredit courses. This needs to be clearly acknowledged in the Bill.

TEQSA should have the power to place conditions or restrictions on a provider's exercise of its self-accrediting powers if it was found not to have delivered courses of study at an acceptable level or where it had abused its power to self-accredit. There needs to be greater clarity in how self-accrediting status, registration and TEQSA's regulatory framework will operate in practice. This needs to be clearer in the Bill.

Section 26 requires amendment. Monash supports the Group of 8 recommendation to amend this section as follows. It is important that the TEQSA bill encourages the well-developed practices universities have developed to facilitate institutional collaboration and exchange and does not stymie activity which brings significant benefits to students, society and the economy both domestically and globally.

The scope of the section is too wide and it would not be possible to implement. As worded, it encompasses credit transfer arrangements (including those for VET programs up to Diploma level), Study Abroad schemes and articulation arrangements with both VET and international institutions. Threshold standards could not be imposed on these institutions. It is clearly not the intention as it would be inconsistent with long standing government policy settings concerning maximising credit and support for international study experiences for students. The intent needs to be made clear and the scope defined accordingly. If left unchanged, it is likely that there would be a significant decrease in the credit granted to students and in their opportunities to include study overseas as part of their degree. This would result from the additional requirement to ensure that Threshold standards had been met in addition to the assessment undertaken for eligibility for credit towards an Australian award.

Part 4 – Accreditation of courses of study

No comments apart from under Part 3 above.

Part 5 – Higher Education Standards Framework

Further clarification of the Minister's powers to establish standards (Threshold and other standards) and the relationship between the Minister, the Higher Education Standards Panel and the process of consultation with the sector in establishing any standards are required as these are not clear in the draft Bill.

There are requirements that the Minister have regard to advice from the Higher Education Standards panel (all ministerial appointments based on a process determined by the Minister) and must also consult with MCTEE and TEQSA but a legislative instrument is required. The concerning aspect of this model is the Standards are not defined in the legislation and there are open-ended provisions to add any others standards as required.

Monash recommends that the list of Standards be restricted to those that have been identified. The addition of any further Standards should require an amendment to the Act rather than the process proposed in the Bill.

This is particularly important in the transition period and even more important for the ongoing application and acceptance of standards across the higher education sector. The current consultation process on the Draft Provider Standards has been very positive and this approach ensures consensus and support on all key issues.

Part 6 – Investigative powers

Monash notes that the investigative functions of the Agency are similar to those in place for the ESOS Act. It is not clear what circumstances would generate an investigation for a program/course of study within a university/self-accrediting institution. This needs to be made clearer. The interaction of the basic principles and any decision to investigate would be beneficial. The university would encourage an early referral of any issues so these may be reviewed and resolved within the institution rather than result in a full investigative process as the first action taken by TEQSA. This would reflect the level of risk currently posed by the university sector. However, the addition of the principles ought to act as some form of protection against vexatious allegations for both TEQSA and institutions.

Part 7 – Enforcement

No comments

Part 8 – Tertiary Education Quality and Standards Agency

Part 8, Division 2 Appointment of Commissioners (pp.101)

A Chief Commissioner or Commissioner may only be appointed if the Minister for Tertiary Education is satisfied that the person has appropriate qualifications, knowledge and experience. Monash recommends that reference to 'experience" be amended to "experience in the sector".

Part 9 – Higher Education Standards Panel

The expertise and knowledge required of members requires some strengthening to ensure the appropriate balance of expertise in both setting standards in higher education and in ensuring their implementation and management at an institutional level.

Monash recommends that Section 167 (2) (a) be amended as follows:

(2) When appointing the Panel members, the Minister must:
(a) ensure an appropriate balance of professional knowledge and demonstrated expertise *in the setting of standards in higher education and* their *implementation at an institutional level.*

Part 10 – Administrative Law Matters
Part 11 – National Register of Higher Education Providers
Part 12 – Miscellaneous

Administrative Law Matters Section 196, Disclosing information to the public.
This section remains very wide – TEQSA may disclose to the public "higher education information that relates to anything done, or omitted to be done, under (the TEQSA Act)."

The Explanatory Memorandum (page 94) gives only two examples, and they show the section will be widely interpreted. One of the examples is the release of "good practice guides", but the other example indicates a need for concern - TEQSA "might release information to aid prospective students to make more informed choices about where to study". There should be some sort of rider placed on the power – just one possibility could be for instance that TEQSA must not use it in such way as to unfairly disadvantage some higher education providers or unfairly advantage others.

Further to clause 196, preceding clauses 193 to 195 all contain appropriate qualifications of the power to disclose to professional bodies and regulatory authorities, and yet there is no qualification whatsoever in disclosures to the public. The examples given in the Explanatory Memorandum about the import of clause 196 do not assist, and in fact support a literal reading of section 196 that there is no constraint on what TEQSA discloses to the public, apart from that contained in the definition of "higher education information", that it must not be personal information under the privacy legislation." A qualification should be included in clause 196 which explains the purpose or the purposes for which the disclosure may be made, or alternatively that the disclosures should be fair and not prejudicial to any higher education provider.

The Explanatory Memorandum for the TEQSA bill acknowledges that the three principles of regulatory necessity, risk and proportionality underpin TEQSA's risk-based regulatory approach. Given the importance of these principles, Monash considers that a decision by TEQSA that fails to comply with the basic principles should be subject to review by the AAT. Monash seeks an appropriate amendment to clause 183 of the TEQSA Bill, which prescribes the decisions that are reviewable, to include the power to review such decisions.

2. Comments on the *Tertiary Education Quality and Standards Agency (Consequential Amendments and Transitional Provisions) Bill 2011*

Schedule 1 – ***Education Services for Overseas Students Act 2000***

No comments

Schedule 2 – Other Amendments

No comments

Schedule 3 – Transitional Provisions

Transfer of authorisation to self-accredit courses of study

Division 5 (p.37) provides for the transferred registration to include the authority to self –accredit one of more courses of study, if immediately before the transfer the provider's registration included "a similar authority". There is also a statement that notwithstanding this inclusion of authority in the transfer of registration, TEQSA is not constrained from restricting or removing the authority under the TEQSA Act.

There is no statement about what happens when the transferred registration ends, but in the TEQSA Bill, there is provision for applying for renewal of registration after the end date for the transferred registration (with no mention of including an existing self-accreditation authority) and there is provision for applying to self-accredit. This needs to be clarified – as presently drafted it is not clear whether the transferred authority to self accredit continues until TEQSA says otherwise, or whether the authority must be applied for (under section 41, page 34 of the Bill) at the time of applying for renewal of registration. This is important and the position should be made quite clear.

3. General Comments

No comments