

The Senate

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Education and Employment  
Legislation Committee

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Tertiary Education Quality and Standards  
Agency Amendment Bill 2014

June 2014

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# **RECOMMENDATIONS**

## **Recommendation 1**

**2.63 The committee recommends that the Senate pass the bill.**





# CHAPTER 1

## Introduction

### Reference

1.1 On 6 March 2014, the Senate referred the Tertiary Education Quality and Standards Agency Amendment Bill 2014 (Bill) to the Education and Employment Legislation Committee (committee) for inquiry and report by 16 June 2014.<sup>1</sup>

### Background

1.2 In 2008 the Rudd Government initiated a wide-ranging review of the higher education sector in Australia, led by Professor Denise Bradley AC. The review recommended the Government adopt a framework for higher education accreditation, quality assurance and regulation through the establishment of a 'national regulatory body'.<sup>2</sup>

1.3 In 2009 the Government announced the establishment of the Tertiary Education Quality and Standards Agency (TEQSA). It was envisaged that the new agency would regulate university and non-university higher education providers against a set of national standards, known as the Higher Education Standards Framework. These would comprise threshold standards (provider and qualification standards) and other (or non-threshold) standards (teaching, learning, research and information standards).<sup>3</sup>

1.4 Legislation providing for the establishment of TEQSA, the *Tertiary Education Quality and Standards Agency Act 2011* and the *Tertiary Education Quality and Standards Agency (Consequential Amendments and Transitional Provisions) Act 2011*, was passed by the Parliament on 22 June 2011. TEQSA commenced operations on 29 July 2011, assuming its full regulatory powers on 29 January 2012.

1.5 On 29 May 2013 the Gillard Government announced that in response to concerns from universities about the cost of regulatory compliance and reporting, it

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1 *Journals of the Senate*, No. 18 – 6 March 2014, pp 576–7.

2 Recommendations 19 and 20, Professor Denise Bradley AC, et al, *Review of Australian Higher Education: Final Report*, December 2008.

3 The Hon. Julia Gillard, MP, Minister for Education, Employment and Workplace Relations, 'Budget 2009–10: New agency to set quality benchmarks in higher education', Media release, 12 May 2009; Revised Explanatory Memorandum, Tertiary Education Quality and Standards Agency Bill 2011, p. 3.

had established an independent Review of Higher Education Regulation (Review), to be conducted by Professors Kwong Lee Dow AO and Valerie Braithwaite.<sup>4</sup>

1.6 The Review assessed TEQSA's regulatory approach against its three regulatory principles:

- regulatory necessity (exercise of its powers does not burden the provider any more than is reasonably necessary);
- reflecting risk (taking into account the provider's history, internal quality assurance mechanisms, financial status and capacity); and
- proportionate regulation (powers are exercised in proportion to any non-compliance, or risk of future non-compliance, by providers).<sup>5</sup>

1.7 The Review found that:

The dominant perception in the sector is that the TEQSA Act is not being interpreted in line with its basic principles of necessity, risk and proportionate regulation...Rather a 'one-size fits all' approach is being applied across the higher education sector, irrespective of an institution's characteristics, history or risk.<sup>6</sup>

1.8 The administrative burden imposed upon providers in complying with TEQSA's reporting requirements and quality assessment functions was found to be the focus of particular criticism from the higher education sector.<sup>7</sup>

1.9 TEQSA Commissioners also reported to the Review that the TEQSA Act 'significantly restricts their capacity to delegate their powers and functions', creating inefficiencies in decision-making.<sup>8</sup>

1.10 The Review concluded that while having a national body such as TEQSA responsible for compliance and monitoring is 'crucial to maintaining the quality of Australia's higher education sector', aspects of quality assurance and best practice were 'better identified and delivered through other means'.<sup>9</sup> It was further suggested

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4 The Hon. Craig Emerson, MP, Minister for Tertiary Education, Skills, Science and Research, and the Hon. Sharon Bird, MP, Minister for Higher Education and Skills, 'Reduced red tape burden for universities', Media release, 29 May 2013.

5 Kwong Lee Dow and Valerie Braithwaite, *Review of Higher Education Regulation: Report*, 2013, pp 62, 42; *Tertiary Education Quality and Standards Agency Act 2011*, s. 13–16.

6 Kwong Lee Dow and Valerie Braithwaite, *Review of Higher Education Regulation: Report*, 2013, p. 43.

7 Kwong Lee Dow and Valerie Braithwaite, *Review of Higher Education Regulation: Report*, 2013, pp 36, 47.

8 Kwong Lee Dow and Valerie Braithwaite, *Review of Higher Education Regulation: Report*, 2013, pp 33–4.

9 Kwong Lee Dow and Valerie Braithwaite, *Review of Higher Education Regulation: Report*, 2013, pp 1–2.

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that 'institutions are often best placed and should be largely responsible for assuring the quality of their educational provision'.<sup>10</sup>

1.11 A specific recommendation of the Review was that the Government should:

reduce TEQSA's functions to focus on its core activities as a regulator; to reduce the number of Commissioners over time and revise their roles and responsibilities to allow greater decision-making responsibilities to be assigned to case managers or other TEQSA staff as appropriate.<sup>11</sup>

1.12 The Minister for Education announced his intention to implement the recommendations from the Review in October 2013.<sup>12</sup>

### **Purpose and key provisions of the Bill**

1.13 The Tertiary Education Quality and Standards Agency Amendment Bill 2014 seeks 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 Review.<sup>13</sup>

1.14 The Bill, which comprises eight parts, aims to increase the efficiency of TEQSA and reduce the burden on higher education institutions.<sup>14</sup>

1.15 Part 1 of the Bill removes references to TEQSA's quality assessment activities which allowed it to conduct sector-wide thematic reviews of institutions or courses of study, while retaining its provider registration and course accreditation functions.

1.16 Part 2 seeks to reduce administrative backlogs in TEQSA by allowing functions and powers formerly undertaken by Commissioners to be delegated to appropriate level TEQSA staff. It also enables applicants seeking to appeal a TEQSA decision access to the agency's internal review mechanisms.

1.17 The ability of TEQSA to extend the period of registration for higher education providers and course accreditation is covered in Part 3. The extended period may exceed seven years.

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10 Kwong Lee Dow and Valerie Braithwaite, *Review of Higher Education Regulation: Report*, 2013, p. 48.

11 Recommendation 1, Kwong Lee Dow and Valerie Braithwaite, *Review of Higher Education Regulation: Report*, 2013.

12 The Hon. Christopher Pyne, MP, Minister for Education, 'Government to reduce red tape in higher education', Media release, 23 October 2013.

13 Explanatory Memorandum, Tertiary Education Quality and Standards Agency Bill 2013, p. 1.

14 The Hon. Christopher Pyne, MP, Minister for Education, Tertiary Education Quality and Standards Agency Amendment Bill second reading speech, *House of Representatives Hansard*, 27 February 2014, p. 1080.

1.18 Provisions relating to the appointment of Commissioners outlined in Part 4 give the minister the flexibility to reduce the number of Commissioners, in addition to the Chief Commissioner, from the current number of four. Additional provisions remove the requirement to appoint a specific number of part-time and full-time Commissioners.<sup>15</sup>

1.19 The TEQSA Act provides that the Chief Commissioner is also the Chief Executive Officer. Part 5 separates these two roles and outlines provisions relating to the appointment and terms of employment of the Chief Executive Officer.

1.20 Part 6 details requirements which would apply to TEQSA when notifying higher education providers of decisions, specifying in particular whether the provider need be informed of the reasons for decisions.

1.21 Under section 136 of the TEQSA Act, the Minister may, by legislative instrument, give a direction to TEQSA if the minister considers that the direction is 'necessary to protect the integrity of the higher education sector'. Part 7 of the Bill seeks to amend this section to allow the minister to give TEQSA directions of a general nature 'in relation to the performance of its functions and the exercise of its powers'.<sup>16</sup>

1.22 Part 8 seeks to amend section 158 of the TEQSA Act to specify that TEQSA may not make a legislative instrument relating to the payment of fees without written approval from the minister.

### **Conduct of the inquiry**

1.23 The committee advertised the inquiry in *The Australian* on 19 March 2014. Details of the inquiry, including a link to the Bill and associated documents, were placed on the committee's website at [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Education\\_and\\_Employment](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment). The committee also wrote to 130 organisations, inviting submissions by 2 May 2014. Submissions continued to be accepted up to two weeks after that date.

1.24 The committee received 20 submissions, which are listed in Appendix 1 and published on the committee's website.

1.25 A public inquiry was held on 6 June 2014. The list of witnesses for the hearing is at Appendix 2.

### **Acknowledgements**

1.26 The committee thanks those organisations and individuals who contributed to this inquiry by preparing written submissions and giving evidence at the hearing.

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15 Explanatory Memorandum, Tertiary Education Quality and Standards Agency Bill 2013, p. 13.

16 Explanatory Memorandum, Tertiary Education Quality and Standards Agency Bill 2013, p. 22.

# CHAPTER 2

## Key issues

2.1 The majority of submissions received broadly supported the aim of the Bill in reducing the regulatory burden and multiple reporting requirements on higher education providers and increasing the efficiency of the Tertiary Education Quality and Standards Agency (TEQSA).

2.2 Submitters voiced specific concerns in relation to the implications of the proposed amendments, including the:

- removal of TEQSA's quality assessment function;
- delegations of powers;
- extension of the period of registration and accreditation; and
- minister's powers to give directions to TEQSA.

### Quality assessments

2.3 Section 60 of the 2011 TEQSA Act sets out its powers to conduct quality (including thematic) assessments:

TEQSA may review or examine any aspect of an entity's operations to:

- (a) assess the level of quality of higher education provided by one or more registered higher education providers; or
- (b) assess whether there are any systemic issues relating to a particular course of study leading to a particular regulated higher education award; or
- (c) assess the level of quality of, or whether there are any systemic issues relating to, the courses of study that lead to one or more kinds of regulated higher education awards.

2.4 The Minister for Education explained in his second reading speech that the removal of TEQSA's quality assessment function, through the repeal of section 60, will allow TEQSA to focus on its core functions of higher education provider registration and course accreditation. The minister also noted that sector-wide thematic reviews are 'time and resource-intensive, of TEQSA itself but also of the higher education institutions which are asked to provide input to the reviews'.<sup>1</sup>

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1 The Hon. Christopher Pyne, MP, Minister for Education, Tertiary Education Quality and Standards Agency Amendment Bill second reading speech, *House of Representatives Hansard*, 27 February 2014, p. 1080.

2.5 A number of submitters expressed concerns about whether quality standards will continue to be maintained at a high level.<sup>2</sup>

2.6 In its submission the National Tertiary Education Industry Union (NTEU) stated that 'this substantively changes the nature of quality assurance in Australia's higher education sector' and found the assumption expressed in the Explanatory Memorandum 'that providers already have robust internal processes to ensure quality',<sup>3</sup> a 'considerable leap of faith'. The NEU concluded that 'there is no incentive for higher education providers to commit to improving quality of their course offerings' and the proposed changes 'may have the impact of a "race to the bottom"'.<sup>4</sup>

2.7 The University of Sydney Students' Representative Council and the National Union of Students (NUS) both argued that TEQSA should retain its quality assessment function, the latter citing the 'possible damage to the reputation of the sector if Australia was seen to be getting rid of externally verifiable quality assurance processes beyond minimum thresholds'. NUS further suggested that the 'TEQSA Advisory Council would seem to be an avenue where the sector could be consulted over the design and appropriateness of thematic studies'.<sup>5</sup>

2.8 Flinders University, while broadly supporting the separation of regulation from quality assessment, noted:

If the Higher Education sector is to maintain and develop its national and international reputation, it must be able to demonstrate publicly the quality of its programs and operations with reference to independently determined, national parameters as well as institution-specific quality parameters and strategic plans.<sup>6</sup>

2.9 Monash University strongly supported the removal of the quality assessment function, but still saw a role for TEQSA in monitoring sector-wide issues, particularly in the application of the Higher Education Standards Framework used by TEQSA to evaluate education providers and courses:

Perhaps TEQSA could observe any particular trends across a range and or a number of providers that may require further investigation. This may relate to the Standards as interpreted or new developments not anticipated in the

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2 National Tertiary Education Industry Union, *Submission 1*, pp 4–5; National Union of Students, *Submission 14*, pp 2, 7–10; Students' Representative Council The University of Sydney, *Submission 19*, p. 3.

3 Explanatory Memorandum, Tertiary Education Quality and Standards Agency Bill 2014, p. 3.

4 *Submission 1*, pp 4–5.

5 *Submission 19*, p. 3; *Submission 14*, [pp 7, 10]. See also: The Hon. Christopher Pyne, MP, Minister for Education, 'Upholding standards and quality in higher education', Media release on the establishment of the TEQSA Advisory Council, 22 April 2014.

6 Flinders University, *Submission 2*, p. 2.

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Standards. In such cases, a referral to the Minister to consider whether or not an independent national review should be initiated may be appropriate.<sup>7</sup>

2.10 The Council of Private Higher Education advocated a similar position:

TEQSA should be in a position to report broad higher education quality issues it identifies to the Minister who can then undertake whatever review is called for using the most appropriate resources available which may be administered through the Department.<sup>8</sup>

2.11 The Department of Education informed the committee that TEQSA has carried out only one quality assessment under section 60, on third party teaching arrangements, that the 'sector was highly critical of the methodology used and the amount of time and resources required to complete the assessment', and that no results or analysis were released.<sup>9</sup>

2.12 TEQSA further explained that under the proposed amendments it still retained a number of core responsibilities for assuring quality. In particular it could deal with substandard higher education providers by conducting compliance assessments<sup>10</sup> under section 59 of the Act which states:

TEQSA may review or examine any aspect of an entity's operations to assess whether a registered higher education provider continues to meet the Threshold Standards.

2.13 The Australian Council for Private Education and Training observed that 'if TEQSA is doing its job properly under clause 59, there is no need for clause 60'.<sup>11</sup>

2.14 Other mechanisms detailed by TEQSA for dealing with provider integrity are the reregistration process and its power to shorten a registration period. The annual risk assessment process, which was not linked to threshold standards, would also ensure that students receive a 'quality learning experience'.<sup>12</sup>

2.15 Professor Kwong Lee Dow advised the committee that under the proposed amendments only three words were being removed from TEQSA's functions and

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7 Monash University, *Submission 10*, p. 1.

8 Council of Private Higher Education (COPHE), *Submission 17*, p. 2.

9 Department of Education, *Submission 3*, p. 3.

10 Ms Dorte Kristoffersen, Acting Chief Commissioner, Tertiary Education Quality and Standards Agency, *Proof Committee Hansard*, 6 June 2014, p. 34.

11 Ms Claire Field, Chief Executive Officer, Australian Council for Private Education and Training, *Proof Committee Hansard*, 6 June 2014, p. 48.

12 Ms Dorte Kristoffersen, Acting Chief Commissioner, Tertiary Education Quality and Standards Agency, *Proof Committee Hansard*, 6 June 2014, pp 33–5.

powers under section 134 of the TEQSA Act, and that in this section 'very extensive' quality assurance powers remained.<sup>13</sup>

2.16 The committee heard that TEQSA's existing powers to 'collect, analyse, interpret and disseminate information relating to...quality assurance practice, and quality improvement, in higher education'<sup>14</sup> were required by the regulator to check on institutions.<sup>15</sup>

2.17 Furthermore, the review of the Higher Education Standards Framework under Professor Alan Robson was strengthening standards and incorporating non-threshold standards (teaching, learning, research and information) into the threshold standards (provider standards and qualification standards).<sup>16</sup>

2.18 In Professor Lee Dow's view, while quality assessment elements were important:

what they need to be focused on are the institutions themselves. The regulator needs to simply test that the institutions are in fact conducting that work, rather than getting into the very detailed work that it was doing...that was just taking inordinate amounts of time and really tying up both it and the institutions in what could genuinely be called red tape.<sup>17</sup>

2.19 Professor Lee Dow expressed confidence that there will always be a capacity to investigate quality issues 'through the standards framework and through the curriculum and those underpinning aspects of the criteria for regulation'.<sup>18</sup>

2.20 Universities Australia (UA) added that it was not the role of TEQSA to pass judgement on how well providers met qualitative standards, but rather that they provided 'a bar to be overcome'. UA further pointed to 'very strong' internal quality mechanisms including 'academic boards, peer review, internal and external benchmarks'. At the point of registration institutions have to be able to demonstrate these standards and assure quality.<sup>19</sup>

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13 Professor Kwong Lee Dow, *Proof Committee Hansard*, 6 June 2014, p. 12.

14 Paragraph 134(1)(e), *Tertiary Education Quality and Standards Agency Act 2011*.

15 Professor Kwong Lee Dow, *Proof Committee Hansard*, 6 June 2014, p. 14; Ms Belinda Robinson, Chief Executive, Universities Australia, *Proof Committee Hansard*, 6 June 2014, p. 27.

16 Mr Paul Kniest, National Tertiary Education Industry Union Policy and Research Coordinator, *Proof Committee Hansard*, 6 June 2014, p. 7; Mr Mike Teece, Deputy Executive Director, The Group of Eight, *Proof Committee Hansard*, 6 June 2014, p. 21.

17 Professor Kwong Lee Dow, *Proof Committee Hansard*, 6 June 2014, p. 11.

18 Professor Kwong Lee Dow, *Proof Committee Hansard*, 6 June 2014, p. 13.

19 Dr Nathan Cassidy, Policy Analyst, and Ms Belinda Robinson, Chief Executive, Universities Australia, *Proof Committee Hansard*, 6 June 2014, pp 25, 27.



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### ***Committee view***

2.21 The committee agrees with stakeholders that the maintenance of quality standards is essential to protect students and to sustain and enhance the reputation and integrity of Australia's higher education system.

2.22 The committee acknowledges the concerns expressed by some submitters regarding the removal of TEQSA's quality assessment function. However, the committee considers this measure is necessary to reduce the administrative burden imposed upon higher education providers in participating in TEQSA's assessment reviews and to refocus TEQSA's efforts to reduce backlogs in other core areas.

2.23 Furthermore, the committee considers that under the proposed legislation, TEQSA will still be well equipped to undertake quality-related functions including monitoring and making recommendations to the minister on matters that affect the higher education sector as a whole.

### **Delegations**

2.24 Subsection 199(1) of the TEQSA Act provides that any or all of TEQSA's functions and powers can be delegated to:

- (a) a Commissioner; or
- (b) a member for the staff of TEQSA who holds the classification of APS Executive level 1 or higher, or an equivalent classification; or
- (c) a Commonwealth authority; or
- (d) a person who holds any office or appointment under a law of the Commonwealth.

2.25 Subsection 199(2) outlines a number of decision-making powers relating to TEQSA's core functions which cannot be delegated, including provider registration and course accreditation. Section 200 specifies accreditation powers that can only be delegated to a Commissioner.

2.26 The Explanatory Memorandum observes that the restriction of the delegations to specific TEQSA staff in the legislation has contributed to a 'backlog in provider re-registration applications and course accreditation and re-accreditation applications'. It argues that unnecessary delays in course accreditation may 'impact on the sector's competitiveness and may discourage innovation':

Where decisions have been made at the highest levels within TEQSA, applicants are prevented from accessing TEQSA's internal review mechanisms. As a result, applicants seeking to appeal a TEQSA decision must request review through the Administrative Appeals Tribunal.<sup>20</sup>

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20 Explanatory Memorandum, Tertiary Education Quality and Standards Agency Bill 2014, p. 9.

2.27 To support swifter decision-making and faster turnaround of applications, Part 2 of schedule 1 proposes that section 200 and subsection 199(2) be repealed. The substitution of proposed subsection 199(2) will restrict the powers not delegable under subsection 199(1) to 'a power to make, vary or revoke a legislative instrument'.

2.28 Submitters generally supported the aim to improve the efficiency of TEQSA in performing its registration and accreditation roles through the delegation of powers from the Commissioners to senior TEQSA staff. They also supported the greater access of providers to internal appeals mechanisms.

2.29 RMIT considered however, that efficiency measures be 'balanced against the core principles of the Act, namely to reflect risk, proportionality and necessity ("the Basic Principles")', and that:

The ability for TEQSA to delegate under the amended provisions has not been clearly defined and it would be useful to clarify the delegation of functions and powers under Subsection 199 in the context of the Basic Principles of the Act. TEQSA's delegation of decision making responsibilities needs to be underpinned by a coherent and consistently applied principle-based risk assessment framework to inform its case management model.

2.30 NTEU and NUS expressed concerns that repealing subsection 199(2) would remove restrictions on delegating the majority of TEQSA's functions and powers to other Commonwealth authorities or appointees who are not employed by TEQSA. They recommend the repeal of paragraphs 199(1)(c) and 199(1)(d) to enable functions and powers to be delegated to TEQSA staff (at APS Executive Level 1 or above) only.<sup>21</sup>

2.31 The Department of Education informed the committee that the need for changes to delegations powers had been raised 'by the agency itself as a constraint on its capacity to operate effectively'.<sup>22</sup> TEQSA also confirmed that these powers were important in enabling it to meet the recommendations of the Review.<sup>23</sup> The committee also heard that no delegation to employees of private agencies was permitted under the Act.<sup>24</sup>

2.32 RMIT pointed out to the committee that 'the legislation is completely silent on how delegations will flow' especially regarding the role of the commissioners, noting:

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21 National Tertiary Education Industry Union, *Submission 1*, p. 7.

22 Ms Jessie Borthwick, Acting Deputy Secretary, Higher Education Reform and Support, Department of Education, *Proof Committee Hansard*, 6 June 2014, p. 61; see also Kwong Lee Dow and Valerie Braithwaite, *Review of Higher Education Regulation: Report*, 2013, p. 88.

23 Ms Dorte Kristoffersen, Acting Chief Commissioner, Tertiary Education Quality and Standards Agency, *Proof Committee Hansard*, 6 June 2014, p. 37.

24 Dr Lyndal Groom, Branch Manager, Quality and Deregulation Branch, Department of Education, *Proof Committee Hansard*, 6 June 2014, p. 66.

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Clearly, we will need very strong instruments of delegations, just as we have within universities and other large agencies. If this is not resolved, then there will always be some doubt in the minds of providers and in the minds of the public about how TEQSA's decisions are made and what happens if there is a disagreement between a commissioner and a CEO...<sup>25</sup>

2.33 Specifically addressing the question of a potential disagreement between the Chief Commissioner and the CEO, the Education Department responded:

The proposal goes to allowing a separation of the roles so that the [CEO] can concentrate on the operations of the organisation...and the chief commissioner and other commissioners can concentrate on the regulatory activities that they are required to undertake and the management of the organisation in terms of setting corporate directions and so on. Given the clarity of those respective roles, I am not sure on what grounds or in what areas they would have disagreements.<sup>26</sup>

### ***Committee view***

2.34 The committee is persuaded that the provisions relating to delegations by TEQSA achieve their aim of increasing the efficiency of TEQSA by reducing backlogs for processing re-registrations and accreditations and enabling TEQSA to better use its resources.

2.35 The committee acknowledges concerns expressed by some submitters about delegations to other Commonwealth agencies or appointees, but notes that under the proposed changes, the officials to whom TEQSA's functions and powers may be delegated under subsection 199(1) of the TEQSA Act remain unchanged.

2.36 The committee is of the view that the Bill does not address how delegations will flow under the proposed separation of functions of the Chief Commissioner and Chief Executive Officer and would benefit by further clarification on the roles of the commissioners and the Chief Executive Officer.

### **Period of registration or accreditation**

2.37 Under the TEQSA Act, when granting or renewing applications for registration or course accreditation, TEQSA must also determine the period for which the registration or accreditation applies. In both cases, the period must not exceed 7 years.<sup>27</sup>

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25 Dr Julie Wells, RMIT University Secretary and Vice-President, *Proof Committee Hansard*, 6 June 2014, pp 39, 40–1.

26 Ms Jessie Borthwick, Acting Deputy Secretary, Higher Education Reform and Support, Department of Education, *Proof Committee Hansard*, 6 June 2014, p. 64.

27 See subsections 21(6), 36(4), 49(6) and 56(4).

2.38 Proposed new sections 37A and 57A provide that TEQSA may extend the period of a registered higher education provider's registration or the period of the accreditation of a course of study. In both cases, the extended period may exceed 7 years.

2.39 The advantages of the proposed changes were explained by the Minister for Education:

...in cases where institutions have multiple course accreditations with different end dates or which do not align with the period of registration, or where they are registered under both the TEQSA Act and the Education Services for Overseas Students Act, TEQSA would be able to adjust the period of accreditation or registration to achieve better alignment. This will make the processes much more efficient for higher education institutions.<sup>28</sup>

2.40 Submitters appreciated the need for increased flexibility in managing registration and accreditation processes that were expected to result from the proposed amendments. The reduction in the number of required contacts between providers and TEQSA and the ability to extend accreditation to 'teach out' the remaining students in an old course that is being replaced were also welcomed by submitters.<sup>29</sup>

2.41 Universities Australia noted the Bill does not provide for a maximum possible duration for extensions and emphasised:

...it will be important that any decision to extend registration or accreditation, and the duration of the extension, must be backed by robust internal guidelines and strict criteria to ensure that the decisions made are transparent, proportionate and necessary.<sup>30</sup>

2.42 RMIT concurred with this view and suggested that enabling TEQSA to extend periods of registration beyond 7 years 'could present a real risk in ensuring consistency in the approach to, and assessment of, a provider's ability to meet the Higher Education Standards Framework'. It suggested that:

...upper limits on the duration of extensions should be considered to guide application of the three Basic Principles, and to ensure the integrity of the regulated sector. Consistency in the approach to regulatory activities is critical to representing good practice.<sup>31</sup>

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28 The Hon. Christopher Pyne, MP, Minister for Education, Tertiary Education Quality and Standards Agency Amendment Bill second reading speech, *House of Representatives Hansard*, 27 February 2014, p. 1080.

29 Universities Australia, *Submission 4*, p. 2; COPHE, *Submission 17*, p. 3.

30 *Submission 4*, p. 2.

31 RMIT University, *Submission 18*, p. 2.

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### *Committee view*

2.43 While the committee considers that extending timelines will allow TEQSA to package applications more effectively, it also recognises the need for TEQSA to demonstrate that it will apply this power responsibly and with integrity. The committee is of the view that TEQSA should develop guidelines to apply to the extensions of periods of registration and accreditation.

### **Directions to TEQSA**

2.44 The proposed amendments to subsection 136(1) of the TEQSA Act redefine the directions that ministers may issue to TEQSA, by legislative instrument, from those 'necessary to protect the integrity of the higher education sector' to directions 'in relation to the performance of its functions and the exercise of its powers'.

2.45 Proposed new subsection 136(2) provides that directions must be of a general nature only, while proposed new subsection 136(2A) allows for a specific direction to be made in relation to fees that TEQSA charges for its services.

2.46 The Explanatory Memorandum for the Bill notes the amendment 'broadens the scope and reduces the ambiguity' of the minister's powers.<sup>32</sup> The Department of Education noted in its submission that the 'question of what would constitute such a need to "protect the integrity of the higher education sector" has caused uncertainty about a Minister's ability to give direction to TEQSA'.<sup>33</sup>

2.47 Submitters raised issues relating to the perceived independence of the regulator. Monash University 'has reservations about the inclusion of ministerial powers of general direction and the impact they may have on the independence of the Agency'.<sup>34</sup> TAFE Directors Australia reported that its members expressed concerns should TEQSA be 'solely under the scope of ministerial direction'<sup>35</sup>. NUS queried whether the minister could hypothetically give directions 'to suppress bad news about the sector'.<sup>36</sup>

2.48 RMIT considered that the 'independence of the regulator (both perceived and actual) is fundamental to sector confidence' and that 'in a global market for higher education and research services, such confidence is crucial'. It concluded that:

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32 Explanatory Memorandum, Tertiary Education Quality and Standards Agency Bill 2014, p. 22.

33 Department of Education, *Submission 3*, p. 5.

34 Monash University, *Submission 10*, p. 2.

35 TAFE Directors Australia (TDA), *Submission 9*, p. 4.

36 National Union of Students (NUS), *Submission 14*, p. 10.

the relationship of the Minister and the Commission and Chief Executive Officer ("CEO") and the extent of ministerial powers under the amended Act should be clarified.<sup>37</sup>

2.49 For RMIT<sup>38</sup> and the NTEU, the phrase 'the exercise of its power' was particularly problematic, with the NTEU querying:

Does giving a direction in relation to the exercise of its power mean that the Minister can instruct TEQSA how it should interpret its roles and responsibilities as defined under the Act?<sup>39</sup>

2.50 RMIT expressed the view that 'the Principles of necessity and proportionality should extend to Ministerial directions to frame the use of these powers'.<sup>40</sup>

2.51 Several submitters framed comments in relation to ministerial accountability. NTEU observed that 'Ministerial instruments do not constitute disallowable instruments, and therefore removes the accountability of the Minister's instructions to the Commonwealth Parliament'.<sup>41</sup> This view was also shared by the NUS and Students' Representative Council of The University of Sydney.<sup>42</sup>

2.52 The potential for other legislation to serve as an administrative model was raised by RMIT<sup>43</sup> and Universities Australia, with the latter noting:

the equivalent sections in other regulatory agencies' Acts often impose other conditions on a Minister's ability to provide formal directions. Section 12 of the *Australian Securities and Investments Commission Act 2001*, for instance, contains clauses requiring the Minister to notify ASIC in writing that he or she is considering giving a direction, and allowing the Chairperson the opportunity to discuss the potential direction with the Minister.

UA considers that the inclusion of an equivalent clause in the TEQSA Act would be consistent with ministerial powers established by other regulatory agency legislation and help to assure administrative and procedural integrity.<sup>44</sup>

2.53 The committee heard from Professor Kwong Lee Dow that the proposed changes gave him no cause for anxiety as the constraints in the original Act regarding

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37 RMIT University, *Submission 18*, p. 2.

38 *Submission 18*, p. 2.

39 National Tertiary Education Industry Union (NTEU), *Submission 1*, p. 8.

40 *Submission 18*, p. 3.

41 *Submission 1*, p. 6.

42 National Union of Students (NUS), *Submission 14*, p. 10; *Submission 19*, p. 3.

43 *Submission 18*, p. 2.

44 Universities Australia, *Submission 4*, p. 3.

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specific directions were still present in the Bill and the notion of protecting the 'integrity of the sector' was very general.<sup>45</sup>

2.54 TEQSA addressed this point, confirming to the committee that the minister would be unable to give a direction relating to a specific provider.<sup>46</sup>

2.55 The Department of Education further informed the committee that the proposed changes would bring the Act more in line with other regulatory agencies.<sup>47</sup>

### ***Committee view***

2.56 The committee affirms it is persuaded that it is not the intention of the provisions in the Bill regarding ministerial directions to TEQSA, to compromise the independence of TEQSA. Furthermore, the committee is confident the ministerial directions give the CEO the powers to meet new challenges while still constraining the minister from giving directions regarding a specific institution or decision.

2.57 Nonetheless, the committee takes on board suggestions by some submitters for further consultation between the minister and TEQSA over the issuing of a ministerial direction.

2.58 The committee is persuaded that the Act could be improved by providing that the minister must not give a direction by legislative instrument to TEQSA, unless he or she has notified TEQSA in writing that he or she is considering giving the direction and given TEQSA an adequate opportunity to discuss with the minister the need for the proposed direction.

### **Conclusion**

2.59 The committee supports a risk-based approach to the regulation of the higher education sector which reduces the burden on low-risk providers. The committee is satisfied that the proposed reforms strike a balance between meeting the needs of higher education providers, the community and the end-users—Australian and international students.

2.60 Measures such as the delegation of decision-making powers to case managers and the separation of the roles of the CEO and Chief Commissioner enhance the efficiency of the regulator, allowing resources to be pushed back as capacity builds.

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45 Professor Kwong Lee Dow, *Proof Committee Hansard*, 6 June 2014, p. 12.

46 Ms Dorte Kristoffersen, Acting Chief Commissioner, Tertiary Education Quality and Standards Agency, *Proof Committee Hansard*, 6 June 2014, p. 33.

47 Ms Jessie Borthwick, Acting Deputy Secretary, Higher Education Reform and Support, Department of Education, *Proof Committee Hansard*, 6 June 2014, p. 63; Explanatory Memorandum, Tertiary Education Quality and Standards Agency Bill 2014, p. 1.

2.61 While the committee recognises that TEQSA has already made important changes in its practices and procedures, it maintains that legislative change is still necessary to overcome the core problem that TEQSA has been trying to do too many things and needs to focus its efforts. While cultural change is part of the solution, as Universities Australia observed:

if you are reliant on culture, then you can end up in this situation. But if you have got legislative underpinning, that provides the safeguard for the way that you would like to see the organisation operate.<sup>48</sup>

2.62 As the Review of Higher Education Regulations was completed in August 2013 and the legislation introduced into parliament in February 2014, the committee can see no reason for the legislation to be further delayed.

### **Recommendation 1**

**2.63 The committee recommends that the Senate pass the Bill.**

**Senator Chris Back  
Chair, Legislation**

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48 Ms Belinda Robinson, Chief Executive, Universities Australia, *Proof Committee Hansard*, 6 June 2014, p. 26.



# LABOR SENATOR'S DISSENTING REPORT

## Introduction

1.1 Australia's higher education sector rightfully has an international reputation founded on the quality of the institutions and the courses they provide. In economic terms it is Australia's largest non-resource export industry, earning in excess of \$15 billion annually. But the future prosperity of the sector is not a given – it depends on our ability to maintain standards. It is reasonable, therefore, to proceed cautiously when amending the regulatory architecture surrounding this sector.

1.2 The Senate would be well advised to recall the failures of the years before 2009 when unsustainable volumes of international students led to genuine questions about the quality of an Australian education and the soundness of providers in the market. This, coupled with other issues, caused overseas media and students to question the quality of an Australian education. It is, consequently, appropriate that the Senate proceeds cautiously on considering the TEQSA Amendment Bill, cognisant of the stakes involved and the risks that have increased proportionately following the release of the government's higher education package in May.

1.3 When the bill was introduced in February, without prior notice and without consultation with stakeholders, the government argued that the purpose of the legislation was to implement the recommendations of the *Review of Higher Education Regulation* report (2013) by Professors Valerie Braithwaite and Kwong Lee Dow. That is still the official explanation of why the bill is necessary. But the government has also announced, as part of the 2014-15 budget, a major overhaul of the higher education sector that it must have been planning when the bill was introduced. Consequently the legislation cannot sensibly be discussed in isolation from those proposed changes. If they are implemented, the environment in which TEQSA has to perform its function of regulator will change completely from that in which the Braithwaite-Lee Dow recommendations were originally formulated. At the very least, that should be grounds for caution about possible unintended consequences should the bill become law, and for consideration of possible amendments to avoid those consequences.

1.4 The Braithwaite-Lee Dow recommendations were intended to make TEQSA more user-friendly: they were a response to objections raised by universities about unnecessarily detailed, expensive and time-consuming demands for information. These objections were urged particularly strongly by Group of Eight (Go8) universities, which argued that because of their adherence to high standards and long tradition of self-assessment they should not be constrained by an unduly intrusive regulator. However even among the Go8 hostility to TEQSA's methods was not universal. For example, the vice-chancellor of the Australian National University and Go8 chairman, Professor Ian Young, publicly defended TEQSA in an opinion article in *The Australian's Higher Education Supplement* (30/10/2013), comparing it favourably with its predecessor, the Australian Universities Quality Agency (AUQA):

I have been through three AUQA audits and now one TEQSA re-accreditation. All have been stressful but all have been useful for the institutions involved ... The most onerous of these, one of the first TEQSA re-accreditations of an Australian university, was actually less onerous than an AUQA audit ... I agree TEQSA needs to get its balance between intervention and risk correct. If, however, we overreact now and strip TEQSA of any real power, I suspect we will ultimately regret what might be a short-term victory for some ... The job of TEQSA is to safeguard the international quality of Australian higher education.

1.5 A strong case can be made, even without regard to the radical restructure of higher education set out in the budget that it would be better to allow the evolving operational culture of TEQSA, rather than legislation, to respond to the stakeholders' objections. As Professors Braithwaite and Lee Dow cautioned in their report:

It is easy to recommend apparently straightforward amendments to the legislation which appear agreed by everyone. But this is worryingly simplistic. Patching individual pieces of legislation can fix functional irritations, but will not necessarily change the way in which legislation is being applied and why.<sup>1</sup>

1.6 TEQSA's initial tendency to treat established universities in the same way as it treats non-university providers was not a consequence of legislative prescription. That tendency can be expected to fade as the agency's operational culture matures, and remarks such as Professor Young's suggest that this has already begun to happen. Changing the legislation while ignoring the culture, however, would be exactly the kind of 'worryingly simplistic' reaction that Professors Braithwaite and Lee Dow have warned against.

1.7 The bill alters TEQSA's structure and purpose in fundamental ways. It substantially diminishes the agency's quality-assessment role, other than in assessing institutions against the 'threshold standards', i.e. those concerned with provider registration and course accreditation, in the Higher Education Standards Framework. It allows greater delegation of authority to TEQSA's senior staff, gives the minister the power to reduce the number of commissioners, and extends the minister's power to issue directives to the agency. All of these changes raise disturbing questions that the government has not fully answered.

## **Quality Assessment**

1.8 The bill repeals section 60 of the existing act, which gives TEQSA power to assess institutions, or the sector more broadly, against non-threshold standards in the Higher Education Standards Framework, namely: learning and teaching standards, research standards, and information standards. The minister justifies this change on the grounds that it will streamline the agency's operations by focusing them on

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1 K Lee Dow AO and V Braithwaite, *Review of Higher Education Regulation*, p. 4.

provider registration and course accreditation as core functions. Yet section 60 only states that TEQSA “may review any aspect of an entity’s operations ...”. It does not state that TEQSA must conduct comprehensive quality assessment of all institutions beyond the threshold level. In line with the perception that TEQSA has begun to move beyond a one-size-fits-all approach to institutions that characterised its initial operations, it is not obvious that the section needs to be repealed, especially since weakening the agency in this way might prevent it from dealing with unforeseen problems arising in new providers that have passed the threshold stage.

1.9 As the National Tertiary Education Union stated in its submission to the committee:

the push to reduce regulatory burden is being conflated with deregulation – and in doing so [is] removing an entire mechanism that addresses quality in the sector...<sup>2</sup>

1.10 By seeking to repeal section 60 of the TEQSA Act the government is treating quality assessment as a matter of process, rather than as essentially concerned with outcomes, i.e. with measuring the performance of institutions and the sector against the compacts – the standards, including the non-threshold standards – that secure the reputation on which the higher education sector depends.

1.11 Fears that adherence to the compacts will be eroded by the loss of TEQSA's quality-assessment function have been magnified enormously by the higher education changes announced in the budget. The government intends to create an open market by allowing private providers of all kinds to obtain the public subsidies previously available only to universities. In the minister's words:

For the first time in Australian history, students studying at any registered higher education provider will have their place directly supported by the Australian Government. This includes higher education students at public and private universities, TAFEs and private education colleges. It also includes all accredited higher education diplomas and advanced diplomas as well as associate degrees and degrees.<sup>3</sup>

1.12 This will substantially increase the number of providers and, potentially, greatly increase the risk of quality-assurance issues arising along with them. The argument that these issues can be dealt with effectively by a regulator limited to dealing with threshold standards is an extremely dubious one, not least because under the budget proposals TEQSA will lose 41 per cent of its funding. It will be asked to scrutinise more institutions with fewer resources, while being deprived of the power to extend that scrutiny beyond the initial stages. And in that context, a provision in the bill for TEQSA to extend registration periods beyond seven years is especially problematic.

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2 National Tertiary Education Union, *Submission 1*, p. 4.

3 The Hon Christopher Pyne MP, Minister for Education, *Destination Australia: Tapping into a New Generation of International Business Students*, Speech, 11 June 2014, <http://www.pyneonline.com.au/speeches/business-higher-education-round-table-bhert> (accessed 13 June 2014).

1.13 As RMIT University argued in its submission to the committee, this provision 'could present a real risk in ensuring consistency in the approach to, and assessment of, a provider's ability to meet the Higher Education Standards Framework'. The conclusion that the government actually wants weak regulation to facilitate the entry of new providers into the market is difficult to avoid.

1.14 The potential for a lowering of standards already exists. When TEQSA was created the registration lists of the previous state-based regulators were transferred to it, and it still has not completed reassessment of all the providers on those lists. Indeed, only 40 out of 170 have been assessed. Representatives of the private-provider peak bodies testified to the committee that lax state regulation had generated quality-control problems only in VET, and not in higher-education, institutions. But since TEQSA's reassessment is incomplete there is very little evidence to corroborate the representatives' assurance - we are being asked to take it on faith. The example of the expanded VET market in Victoria, which has resulted in traditional public TAFE providers struggling to compete with a flood of new private providers - many of which offer only briefly fashionable lifestyle courses - in the face of rising costs should be a warning to the government about the need for a strong regulator. There is no indication, however, that it has heeded the warning.

1.15 In the context of the proposed restructure, the risk of dodgy, fly-by-night operators once again appearing in the market and tainting the reputation of other institutions cannot be ignored. In their evidence the private-provider representatives described the existence of dodgy operators such as Greenwich University or the University of Asia as 'an historic problem', implying that it is no longer of concern. But the history is hardly an ancient one; and in any case the relevant questions are: what risks will be generated in the government's proposed new higher-education framework, and how can we be confident that a substantially diminished regulator will be able to deal with them?

1.16 Already some private providers appear to be leaping over the threshold, as it were. *The Australian's Higher Education Supplement* (11/6/14) has reported instances of providers buying other providers that already have registration. How will a regulator focusing only on registration and course accreditation deal with them? Evidence presented to the committee in support of the bill's removal of TEQSA's quality-assessment function did not go beyond confident assertions that concentrating on an institution's compliance with threshold standards would still allow sufficient oversight of quality. In the circumstances, however, confidence that this will be so surely requires more than assertion.

1.17 The majority report argues that removal of TEQSA's quality assessment function 'is necessary to reduce the administrative burden imposed on higher-education providers in participating in TEQSA's assessment reviews ...' This implicitly acknowledges the NTEU's observation, cited earlier, that the change effectively conflates the need to reduce burdensome regulation with an agenda for deregulation. But it cannot be true that the only way to reduce an administrative burden is to remove a central reason for the regular's existence. The implications of this change have not been thought through.

## **Ministerial Directions**

1.18 The same judgment may be made of other changes to the regulator in the bill. Under the present Act, the minister may issue directions to TEQSA, by legislative instrument, 'to protect the integrity of the higher-education sector'. But the bill redefines the minister's power, allowing directions to be issued to TEQSA 'in relation to the performance of its functions and the exercise of its powers'. The explanatory memorandum to the bill states that this change 'broadens the scope and reduces the ambiguity of the minister's powers'; on the contrary, however, ambiguity is surely increased. Under what circumstances is it envisaged that the minister might issue a direction? Does a direction 'in relation to the performance of [TEQSA's] powers' mean that the minister can instruct the agency how to interpret its roles and responsibilities under the Act? And what protection is there against the politicisation of TEQSA's decisions by ministerial direction, given that the minister's power of direction is not a disallowable instrument? Thus far, the only answers to these questions have been blithe and unsatisfactory assurances that nothing sinister is intended or likely to happen. The majority report states that 'the committee affirms it is persuaded that it is not the intention of the provisions in the bill regarding ministerial directions to TEQSA to compromise the independence of TEQSA'. Whether or not that is so, the problem is that the proposed redefinition of the minister's powers have the potential to allow a minister to compromise TEQSA's independence.

## **Delegations**

1.19 The bill would also allow TEQSA to delegate its functions or powers to "a person who holds any office or appointment under a law of the Commonwealth". That might be seen as the innocuous secondment of officers from other Commonwealth agencies or departments to ease staffing or resource problems. But since the power of delegation is so broad it raises the possibility of a blurring of roles that should not be blurred: an immigration officer, for example, might bring concerns to the process of assessment that ought not to be TEQSA's concerns.

## **Commissioners**

1.20 The bill reduces the number of TEQSA's commissioners and separates the roles of chief commissioner and chief executive officer, which are now held by one person. This supposedly applies a corporate model to TEQSA's operation, allowing greater efficiency. But in business corporations a CEO is appointed by the company's board, whereas under the bill's new model for TEQSA the CEO will be appointed by the minister. As Dr Julie Wells, the University Secretary and Vice President of RMIT University, noted in her evidence, the commissioners' role is not clearly defined in the legislation and there is a real risk if the relationship between the commissioners and

the CEO is not understood.<sup>4</sup> Dr Wells' comment raises the disturbing question of whether the commissioners will effectively be reduced to the status of mere ciphers, especially given the change in the minister's power to issue directives. He will appoint the CEO; if he issues a directive will it therefore be to the CEO, sidelining the commissioners?

1.21 The number of commissioners will not be reduced by attrition but by spilling all the existing positions. The sacking of a board by legislation sets a disturbing precedent that goes beyond the regulation of higher-education regulation. Does this raise the prospect that all Human Rights commissioners, for example, might be dismissed in this way? Or the Fair Work Australia commissioners, perhaps?

1.22 Labor Senators are concerned that the legislation may well be premature. The Senate should be cautious about reshaping the powers of TEQSA at a time when the number and scope of higher-education providers is likely to expand rapidly.

### **Recommendation 1**

**1.23 Labor Senators recommend that TEQSA's discretionary power to conduct assessments of non-threshold standards should not be removed.**

### **Recommendation 2**

**1.24 Labor Senators recommend that an upper limit should be placed on TEQSA's ability to extend registration periods.**

### **Recommendation 3**

**1.25 Labor Senators recommend that the number of commissioners, their role, their relationship with the Chief Executive Officer and the grounds on which they may be dismissed should be clearly identified.**

### **Recommendation 4**

**1.1 Labor Senators recommend that the minister's power to issue directions to TEQSA should become a disallowable instrument.**

**Senator Sue Lines  
Deputy Chair, Legislation**

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4 Dr Julie Wells, University Secretary and Vice-President, RMIT University, *Proof Committee Hansard*, 6 June 2014, p. 38.

# AUSTRALIAN GREENS DISSENTING REPORT

## Introduction and Summary

1.1 The Australian Greens believe adequate regulation and quality assurance mechanisms are crucial to building a strong higher education sector.

1.2 All stakeholders in the sector including students, staff, state and federal governments and the broader community deserve to have mechanisms in place to ensure the vast amounts of public and private money being spent on higher education are delivering a return in terms of quality.

1.3 While the Greens acknowledge there are areas where the work of TEQSA could be better focused, we don't agree that that warrants the fundamental overhaul currently proposed by the Federal Government.

1.4 The need for a strong regulator in the current system where government and students spend billions on higher education providers is self-evident. The Greens don't support the notion that a private market in and of itself provides adequate oversight and regulation. Education is a public good, and in so far as there is a private market for the delivery of higher education the government must play an essential role in ensuring the quality of that education is of the highest standard so graduates are best equipped for the future.

1.5 As noted in the submission from the National Union of Students (NUS), '...students are ultimately the prime beneficiaries of a strong quality regulatory framework'.<sup>1</sup>

1.6 The proposed expansion of Commonwealth funding to all TEQSA approved higher education providers regardless of whether or not they are public universities or private, for-profit companies, will significantly change the higher education landscape.

1.7 The need for a strong regulator in such an environment becomes even more necessary than it is currently. It is incredibly worrying that the Federal Government is simultaneously proposing to massively expand the private higher education sector, at the expense of the public sector, while stripping back TEQSA's functions and cutting its funding by 41%.

1.8 In addition to articulating the Greens broad approach to higher education regulation, a number of specific issues relating to the current bill are discussed below.

## Issues

1.9 The Greens have a number of concerns with the proposals contained in the proposed legislation to strip TEQSA of its quality assurance responsibilities. As the National Tertiary Education Union (NTEU) argues in their submission:

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1 National Union of Students, *Submission 14*, p. 2.

this section reduces TEQSA's regulatory functions to reviewing or examining an entity's operations to determine whether they meet the Threshold Standards (Provider and Qualifications Standards).<sup>2</sup>

1.10 The removal of quality assurance functions from TEQSA raises serious questions about where that responsibility will now lie, or if in fact it will fall within any government department or agency at all. As the NUS states:

What happens to the quality assurance improvement functions that AUQA used to perform? The [Lee] Dow-Braithwaite report argues that aspects of sector or discipline-based quality assurance – best practice and continuous improvement – could be better delivered through the Office of Learning and Teaching. NUS would be concerned about the adequacy of current resource levels for the Office of Learning and Teaching to take on this role. The Government needs to reveal its intentions with regard to these functions.<sup>3</sup>

1.11 As noted by both the NUS and NTEU there are significant concerns around Section 199 (1) (c) and Section 199 (1) (d) in the proposed legislation that will allow TEQSA powers to be delegated to 'other Commonwealth authorities or even appointees who are not employed by TEQSA.'<sup>4</sup>

1.12 The Greens have strong concerns around the proposals to authorise the Minister to reduce the number of TEQSA Commissioners, provide the Minister with greater flexibility in terms of Commissioner appointments, as well as the proposed legislation's impact on current Commissioners ie. their termination following the passage of the bill. As the NTEU notes:

...this raises serious question about procedural fairness and natural justice for people who have entered into an employment contract in good faith. If the Minister wishes to have the power to dismiss a Commissioner or Commissioners on grounds other than those currently specified in the Act, then he or she should amend the legislation to change the reasons and not use transitional arrangements associated with changes to the Act to remove people for unspecified reasons.<sup>5</sup>

1.13 The proposals to increase the capacity and scope of the Minister to provide TEQSA with specific direction are also of concern. As a minimum, as noted by NUS in their submission, such directions should be disallowable by Parliament. As noted by the NTEU in their submission, the amendments 'significantly impact on the independence of TEQSA'.<sup>6</sup>

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2 National Tertiary Education Union, *Submission 1*, p. 6.

3 National Union of Students, *Submission 14*, pp 9–10.

4 *Submission 1*, p. 8.

5 *Submission 1*, pp 7–8.

6 *Submission 1*, p. 8.



## **Conclusion**

1.14 The proposed legislation, while clearly supported by university management and the private sector lobby, has not gone through a consultation process involving staff and students prior to this inquiry. Staff and students are arguably the biggest stakeholders in the higher education sector and certainly the most likely to feel the direct impacts of weakened quality assurance mechanisms.

1.15 Further, the legislation was drafted and introduced prior to the Federal Government's announcement that it would expand Commonwealth funding to all TEQSA approved higher education providers. Such a significant policy change will have enormous implications for the sector as a whole but also more particularly for the functions and responsibility of TEQSA.

1.16 A review of higher education regulation must take into account these factors.

## **Recommendation 1**

**1.17 The Australian Greens recommend the bill not be passed in its current form.**

**Senator Lee Rhiannon**



# **APPENDIX 1**

## **Submissions received**

- 1** National Tertiary Education Industry Union (NTEU)
- 2** Flinders University
- 3** Department of Education
- 4** Universities Australia
- 5** Mr Andrew Oliver
- 6** The Group of Eight
- 7** University of Queensland
- 8** Australian Council for Private Education and Training (ACPET)
- 9** TAFE Directors Australia (TDA)
- 10** Monash University
- 11** Innovative Research Universities (IRU)
- 12** Deakin Univeristy
- 13** University of New South Wales
- 14** National Union of Students
- 15** Australian Institute of Professional Education
- 16** University of the Sunshine Coast
- 17** Council of Private Higher Education (COPHE)
- 18** RMIT University
- 19** Sydney University Students Representative Council
- 20** Name withheld



## **APPENDIX 2**

### **Public Hearing**

*Canberra, Friday, 6 June 2014.*

BORTHWICK, Ms Jessie, Acting Deputy Secretary, Higher Education Reform and Support, Department of Education

CASSIDY, Dr Nathan John, Policy Analyst and Academic, Universities Australia

EMMANUEL, Mr Indhi, Chief Finance and Operating Officer, Tertiary Education Quality and Standards Agency

FIELD, Ms Claire Louise, CEO, Australian Council for Private Education and Training

GROOM, Dr Lyndal, Branch Manager, Quality and Deregulation Branch, Department of Education

JOHNSON, Mr Ben, Acting Group Manager, Quality and Student Support, Department of Education

KING, Mr Conor, Executive Director, Innovative Research Universities

KNIEST, Mr Paul, Policy and Research Coordinator, National Tertiary Education Union

KRISTOFFERSEN, Mrs Dorte, Acting Chief Commissioner, Tertiary Education Quality and Standards Agency

LEE DOW, Prof. Kwong Chiu, Private capacity

MACDONALD, Dr Terri, Policy and Research Officer, National Tertiary Education Union

McCOMB, Mr Adrian, CEO, Council of Private Higher Education

ROBINSON, Ms Belinda, Chief Executive, Universities Australia

TAYLOR, Ms Deanna, President, National Union of Students

TEECE, Mr Mike, Deputy Executive Director, The Group of Eight

WELLS, Dr Julie Patricia, University Secretary and Vice-President, RMIT University