



Submission to: Senate Select Committee on Red Tape

Inquiry: Effect of Red Tape on Private Education

The Council of Private Higher Education (COPHE)

COPHE represents Australia's independent higher education providers, including independent universities and higher education colleges. COPHE members are both for profit and not-for-profit institutions and educate domestic and international students in undergraduate and postgraduate programs.

COPHE holds a unique position within the higher education sector as a representative peak body of higher education providers only. Whilst some members are dual sector, only the registered higher education entity affiliates through COPHE membership.

Membership of COPHE is only open to providers that are registered with the Australian regulator – Tertiary Education Quality Standards Authority (TEQSA). Membership is also conditional on continued compliance with COPHE's *Code of Good Practice*.

COPHE's primary goal is promoting equity, choice and diversity for all Australian higher education students.

Note

There is a range of terminology currently in use to describe the private higher education sector. This includes HEPs (Higher Education Providers); NUHEPS (Non-University Higher Education Providers); Private Institutions; Private Providers; Independent Providers and iHEPs (Independent Higher Education Providers). These terms are used variously across the sector, however all refer to institutions broadly understood to be the private higher education providers.

COPHE uses and promotes adoption of the term independent, with providers referred to as 'Independent Higher Education Providers'. Use of the term 'independent' in education is broadly understood across the Australian community as referring to the non-public sector.

For the purposes of this submission the term 'private' and 'independent' are used interchangeably where 'private' may better align with the Committee's terms of reference.

Executive Summary

COPHE appreciates the opportunity to respond to the The Senate, Red Tape Committee's enquiry into the effect of red tape on private education. For many of our members, red tape and a high regulatory burden has become the new reality of operating in higher education in Australia.

This growing regulatory burden was recognised in the 2013 Review of Higher Education Regulation Report (Lee Dow-Braithwaite Review). This Review identified "over-regulation, unnecessary demands for information and an unwillingness to meet face-to-face and discuss rather than send long pieces of correspondence" as key areas that TEQSA could address as part of streamlining and simplifying internal processes. The Review examined TEQSA in the context of its remit to be a risk-based regulator. The review concluded that TEQSA did not embody best practice approaches to responsive regulation and made a series of recommendations to better focus the agency (Appendix 1).

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Significantly, the Review reported:

- smaller providers are going to disproportionately feel the burden of regulatory demands from the education sector which comes at a cost to teaching and learning; and
- The Australian Council of Private Education and Training estimated that the cost of meeting regulatory requirements was already between 7 and 10 per cent of turnover (for their NUHEP members).

While the impact of the Review may have had a fleeting effect on the regulatory attitude towards large publicly funded universities, unfortunately, for the private higher education sector, the burden of over-regulation remains. Five years on, the resounding conclusion of the Lee Dow-Braithwaite Review continues to characterise our members' experience:

"It seems to us that it is the smaller less well-resourced providers that are hardest hit by TEQSA's current regulatory approaches".¹

COPHE members are acutely aware of the need to protect and ensure the integrity of the Australian higher education sector. Our members operate in multiple education sectors and provide alternative pathways for students. Additionally, many independent providers rely on international student markets to operate. The integrity and reputation of the whole post-secondary sector is critical to the operations of our members.

In this context, additional student protections and stronger assurance processes are understandable. However, the current higher education policy settings and regulatory attitude enforces a bifurcated system that preferences publicly funded institutions at the expense of private education. In comparison, public institutions are heavily subsidised, lightly regulated, and free to pursue market and product development without external approvals. By contrast, private institutions operate without public subsidy, are extremely heavily regulated and effectively require government approvals for new sites, new courses, new delivery modes, permission to grow international student numbers, and change of ownership.

Over-regulation of the private sector is understood to reflect this attitude. For many COPHE members, it feels like the unscrupulous behaviour of some in the VET sector (the VET FEE-HELP scandal) has hardened the regulatory attitude towards all private providers where 'red-tape' is an unfortunate consequence of this legacy.

Additionally, the broader policy settings of the higher education sector are inequitable. In addition to being ineligible for Commonwealth Subsidised Places (CSPs) and other funding opportunities, the private sector experiences a range of evolving market constraints. Significantly, these affect students at private higher education providers as they are excluded from Commonwealth tuition assurance schemes and are levied a 25% loan fee on the Commonwealth funded FEE-HELP loan scheme. This loan fee does not apply to students in publicly funded institutions or to private universities.

Students of private higher education providers are required to loan 125% of their course costs if they access the government funded HELP scheme.

COPHE has made a series of recommendations in this report that reflect current experiences of our members according to the following themes:

- Over-regulation;
- System Design Inequities; and
- Impact on independent providers

These recommendations are made in a context of acute acknowledgement of the need for a regulated and quality assured system that provides confidence to stakeholders in Australia and overseas. But one that gets the balance right.

¹Dow, K, Braithwaite, V 2013, Review of higher education regulation: report [Lee Dow-Braithwaite Review], Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education, Canberra.

Background

As part of its inquiry into the effect of red tape on the economy and community, the Senate Red Tape Committee will examine the effect of red tape on private education, in particular:

1. the effects on compliance costs (in hours and money), economic output, employment and government revenue;
2. any specific areas of red tape that are particularly burdensome, complex, redundant or duplicated across jurisdictions;
3. the impact on health, safety and economic opportunity, particularly for the low-skilled and disadvantaged;
4. the effectiveness of the Abbott, Turnbull and previous governments' efforts to reduce red tape;
5. alternative institutional arrangements to reduce red tape, including providing subsidies or tax concessions to businesses to achieve outcomes currently achieved through regulation;
6. how different jurisdictions in Australia and internationally have attempted to reduce red tape; and
7. any related matters.

Overview of Compliance for Private Providers

1. Higher Education Context

Since 2012, all registered higher education providers, have been regulated by TEQSA under the TEQSA Act (2011). For the first five years TEQSA regulated against the Higher Education Standards Framework (HESF) (2011) which comprised separate Registration and Accreditation Standards.

In 2017, the sector transitioned to the HESF 2015 which collapsed distinctions between registration and accreditation standards.

TEQSA utilises a suite of guidance notes on a range of topics including explanations of what TEQSA expects to demonstrate compliance with the HESF.

TEQSA also regulates higher education providers against the ESOS Framework which includes the ESOS Act, the National Code of Practice and ELICOS Standards for those HEPs that offer English language programs (ELICOS). TEQSA also conducts annual risk assessment processes which require Higher Education Providers (HEPs) to submit a suite of financial, student and staff data.

While public universities are regulated under the same framework as private or independent providers, the system is designed according to a binary, broadly classified as self-accrediting university and non-self-accrediting higher education provider. While some HEPs are self-accrediting, only two (2) have full self-accrediting authority (SAA) and ten (10) have partial SAA. Most of the ten are not-for-profit and have been operated for many decades. There appears to many COPHE members to be a presumption built in to this classification that is not consistent with Parliament's intention.

2. Dual Sector Context

Nearly half of private HEPs are dual sector institutions, that is, registered to offer both higher education and vocational education and training (VET) courses. The VET sector is regulated under different legislation, regulated by a different Commonwealth regulator (ASQA) and is ultimately the responsibility of a different Federal Minister than higher education.

Therefore, in addition to the requirements and application processes regulated by TEQSA, dual sector providers face an ongoing series of bifurcated regulation that can be inefficient, time-consuming and costly.

Of note, the administration of international education under the ESOS Framework is regulated by both ASQA and TEQSA. Members report a lack of streamlining between the regulators, in particular for CRICOS matters that are “double-handled” by TEQSA and ASQA for dual sector providers, often with differing requirements for documentation and evidence.

3. Other Reporting Requirements

All registered providers including public universities are required to submit annual data sets to the Department of Education and Training (HEIMS) or to TEQSA (through Provider Information Requests). This is a technical, and often labour intensive, process for small independent providers, many of whom operate without the permanent staff resources dedicated to validation and alignment of data to the set definitions.

4. Recent Developments

Feedback from COPHE’s members, along with the observations detailed in the recent HEP Roundtable Report (TEQSA, August 2018) indicate that the issues identified in the 2013 Lee Dow-Braithwaite Review persist. The regulatory burden facing public universities may have been reduced since 2013, through reduced scope of evidence required for application processes in the TEQSA Core+ mode. However, the private sector has not had the same experience.

“As a small institution, we cannot always meet the scale of reform expected from TEQSA in the timeframes allocated. For example, meeting new admissions transparency standards, responding to student safety reviews, reforming processes to meet the requirements of a new National Code, adhering to new recommendations for combatting academic misconduct, keeping up with regular updates to guidance notes (often not well advertised), have all been expected of providers within the last year”.

COPHE Member

Since 2013, a number of legislative changes have occurred which have increased the need for providers to continually respond to shifting regulatory requirements. Since 2013, the following regulatory and legislative shifts have occurred:

- TEQSA transitioned regulation to a new legislative instrument, the Higher Education Standards Framework (2015);
- Changes to the ESOS Framework including the introduction to the 2018 version of the National Code of Practice;
- Uncertainty surrounding tuition protection (TAS) requirements for domestic students with the removal of peak body approvals to provide tuition assurance; the implementation of a departmental exemption for TAS requirements in 2018, (and the resultant separation of HELP recipient students from non-HELP supported students); and, the announcement of a new domestic TPS scheme for 2019
- Provider Integrity Measures introduced which created changes to the TEQSA Act, the HESA Act and ESOS Framework;
- Dis-establishment of the VET FEE-HELP scheme and introduction of the VET Student Loan scheme (for dual sector providers);
- Admissions Transparency Information and Implementation reporting to TEQSA;
- Financial Reporting to TEQSA for dual sector providers following the VET FEE-HELP scandal.

Identification of Red Tape, Duplication or Over-Regulation

5. Duplication between regulators

Dual sector higher education providers experience duplication in processes across jurisdictions regulated by ASQA and TEQSA.

In particular, dual sector higher education providers are required to duplicate their documentation to apply for CRICOS registration for both the VET and Higher Education sectors. This adds to the burden and cost of compliance.

“CRICOS [registration] has been a burdensome process. We now have two sets of policies, procedures and practices that address the same regulatory standards.”

COPHE member

COPHE proposes that government streamline the application requirements for CRICOS registration for dual sector providers in order to minimise the cost and resources required to complete the process of registering for both sectors.

Current overlaps in the information required for accreditation and registration in both the VET and higher education sectors, including duplicating the paperwork and reporting requirements creates unnecessary workload and additional costs for providers (and government). These resources could be better spent providing services to students.

“This duplicity of documentation is not only redundant in places but [it makes it] expensive and at times complex to work across both sectors concurrently.”

COPHE member

COPHE believes there is need for urgent review of legislative requirements that result in duplication of documentation in several areas of higher education compliance and including Australian Consumer Law (ACL) provisions. There is also a need to reduce duplication of evidence and assessment between TEQSA and professional accreditation agencies (for engineering, teaching, health sciences and accounting) and in some cases between TEQSA and State governments in relation to teaching.

COPHE proposes that the government implement reforms to enable dual sector higher education providers to submit paper work relating to different parts of the compliance process once, and enable ASQA and TEQSA to share that data rather than requiring it to be submitted to both regulatory bodies separately.

Recommendation 1

That CRICOS processes and approvals for dual sector providers be streamlined and coordinated by ASQA and TEQSA to remove duplication of evidence required

6. Timeframes for decisions on course accreditation

Currently the time that it takes TEQSA to assess applications before reaching a decision is too long.

Figure 1: Increased in TEQSA decision times

	2015 – 16	2016 – 17
Number of assessments decided	298	296
Average number of days to decision	202	303
Median number of days to decision	165	295

Source: TEQSA Annual Report 2016/2017

The time it takes TEQSA to reach a decision on course accreditations and re-accreditations is excessive. With providers bearing significant costs of application and course development, these delays expose providers to financial risk associated with opportunity cost of an enrolment delays. Re-registration delays create uncertainty for the provider and students - and uncertainty means increased risk, or perception of risk. The lag in the accreditation process also reduces the ability for non-self-accrediting providers to be as responsive to student demand for courses as is necessary to be competitive in the market.

“The timeframes associated with getting a new program approved is [not] conducive to offering programs that meet the fast-changing needs of industry.”

COPHE member

Regulatory delays affect providers’ ability to generate planned revenue placing them at financial risk. Delays also have the potential to create uncertainty and anxiety for the provider and students. Excessive delays in course accreditation approvals reduces the ability for providers to be as innovative and dynamic as necessary to respond to the global market for skills. Further, delays create an unfair system which impacts competitive neutrality principles for non-self-accrediting providers.

The timeframe for processing applications (addressed below) is too long and imposes additional costs to providers in terms of missed opportunities for offering new courses and adequately marketing them.

Recommendation 2

That statutory requirements applied to TEQSA decision making timeframes be strengthened to deliver efficiencies in the assessment model to the benefit of higher education providers and students.

7. TEQSA’s Regulatory Model

COPHE fully supports regulation of higher education providers in order to protect the industry as a whole. It is important, however, that that regulation achieves its aims. If the ultimate aim of regulation of the industry is to ensure that there is the provision of quality higher education to meet the needs of the Australian economy, then there is a need to support diversity, innovation, and choice.

For this to occur, TEQSA needs to better understand the nature and role of independent higher education providers and provide a more flexible regulatory framework across the higher education sector. TEQSA’s relationship with providers would also benefit from regular meetings with providers, particularly in relation to risk assessments. This would provide TEQSA with a more efficient and effective way of gathering the information it needs while providing a flexible and more responsive approach to the regulation of providers.

In terms of frontline regulation, the role of the case managers is crucial for the success of the relationship between TEQSA and the higher education providers.

COPHE members consider that TEQSA's decisions require a more meaningful engagement with the three Regulatory Principles (reflecting risk, proportionality and necessary) that underpin TEQSA's regulatory approach as set out in the TEQSA Act. The agency needs to better demonstrate how their decisions align with the principle of proportionality.

COPHE recommends reforms to ensure a more consistent and efficient regulation system in terms of workload, cost and the credibility. The role of case managers should be reviewed with resourcing to ensure longevity in the partnership with providers so that a proper cooperative relationship has time to develop. More case managers with experience in or understanding of the independent higher education sector should be recruited. Development of a less adversarial relationship (than members report it to be at the moment), would enable TEQSA to work with providers to achieve the aims of regulation in a more efficient way.

Recommendations 3	That TEQSA implement strategies to ensure staff understand the operating context of the private sector including, utilising increased face-to-face engagement in assessment processes to resolve any concerns before a proposed/or final decision is reached.
Recommendations 4	That TEQSA processes be reformed to acknowledge the independent/private context of the private sector in establishing risk ratings and review the effectiveness of "one size fits all" approach to risk ratings.
Recommendations 5	That TEQSA decisions be measured and reported in accordance with the Regulatory Principles of necessity, proportionality, and reflecting risk as set out in the TEQSA Act.

8. Regulatory Creep

In principle, COPHE members acknowledge and accept the legislative framework that TEQSA operates in, including the enabling legislation and regulations. However, in the current environment TEQSA appears to be invoking non-legislative and seemingly discretionary requirements to assessments, including through the rigid application of Guidance Notes. In some cases, a decision (or a condition imposed on a provider) will be based on non-conformity with these non-legislative materials that are authored internally with the agency. This trend constitutes regulatory creep.

COPHE believes that TEQSA's Guidance Notes, should broadly assist providers to implement quality processes that demonstrate compliance with the legislated Standards Framework. However, the Agency has evolved the use of these documents to, under the guise of 'guidance', impose further, and more complicated, standards without a clear legislative basis.

This issue was raised with TEQSA at the 2018 Higher Education Round Table (extract below)

Generally, participants indicated that TEQSA's Guidance Notes were helpful for interpreting the Higher Education Standards Framework. However, the consensus was that more communication is required to alert providers when Guidance Notes are released or updated, and to explain what changes have been made and why.

Some providers also sought clarity about the process for consulting with providers in developing guidance material and on whether the information published in Guidance Notes is a suggestion, a recommendation, an expectation or a 'must do'.

COPHE recommends that TEQSA clarify the status of Guidance Notes and other information on the TEQSA website. For example, noting that the information is advisory only, and not prescriptive. Further, TEQSA may design the Guidance

Note's to be safe harbour arrangements, but that providers may choose to meet the standards in a non-prescriptive way.

Recommendation 6

That TEQSA be required to clarify the status of application forms, Guidance Notes and other public information on the TEQSA website where there are requirements that are not contained in a legislative instrument under which the sector is regulated.

While there is a legislated timeframe of 9 months under the TEQSA Act for new course accreditation, there is no legislated timeframe under TEQSA Act for course renewal decisions. Subsequently, timeframes of over 18 months for decisions have been experienced by HEPs. These lengthy delays have implications on the business of providers and hinder innovation within the education sector, both nationally and globally.

While each course is different and requires assessment of course content, COPHE members report duplication of evidence required by TEQSA for each accreditation application. This includes the repeated submission of governing and institutional frameworks and policies that must be assessed over and over again with each new course and sometimes by a new case manager with little knowledge or background of prior applications.

“[We are] required to resubmit the same information over and over again. Especially in new course accreditation. We should be able to just submit the parts that are individual to the application in question every time”.

COPHE Member

COPHE members also consider the charging of individual fees for each nested course, that is it forms part of a higher qualification, to be excessive. TEQSA should reduce regulatory fees, and accordingly effort in assessing these nested awards.

As non-self-accrediting private providers must have courses accredited by TEQSA. These courses are in effect a providers “product”. The impact of delays and fees is an imposition on the success of a providers ‘product’ and subsequently this area requires significant reform.

COPHE recommends that course accreditation processes are subject to formal assessment period as follows:

- New course: Target 4 months; Limit 6 months
- Renewal course: Target 3 months, Limit 4 months.

Recommendations 7

That TEQSA re-design its accreditation assessment to focus on evidence of course and curriculum rather than operational or broad institutional evidence that is already assessed as part of registration processes

Recommendations 8

That TEQSA streamline assessment processes and fees for nested awards.

Recommendations 9

That statutory timeframes for assessment and accreditation of new and existing courses be set courses is subject to the following timeframes:

- a) New course: Target 4 months; Limit 6 months
- b) Renewal course: Target 3 months, Limit 4 months.

9. CRICOS Capacity

Private providers serving Australia's crucial international student markets are particularly impacted by over-regulation or red-tape of CRICOS decisions (under the ESOS Framework). This includes TEQSA approval of sites to be registered for international student delivery and international student capacity. Duplication of processes aside (and as outlined earlier in this report), the approval of international student capacity at a site is a critical area that requires formality, transparency and quicker assessment timelines.

Decisions impacting a providers ability to service international student markets have a direct impact on other risks including financial sustainability and viability. In this context, providers need efficient and clear processes that identify how TEQSA make decisions on CRICOS capacity. Currently, it is unclear how TEQSA assesses these applications and what the methodology for assessing capacity involves. Many providers report that it the application process is unclear about what evidence providers need to provide.

COPHE recommends that TEQSA develop and implement transparent methodologies for assessing capacity. Assessment and approval processes for increases to CRICOS capacity need to be subject to formal timelines that enable providers to plan for marketing, recruitment and enrolment activities. COPHE recommends:

- CRICOS capacity approval: Target 1 month, Limit 3 months.

Given the current "bottleneck" arising from long timeframes and lack of clarity in TEQSA processing applications for increased capacity, It is recommended that the Minister explore the use of legislative instruments and power to make regulations under the ESOS Act, to reduce red tape and improve the performance and functions of TEQSA in these processes.

Recommendation 10	That TEQSA implement clear guidelines and methodologies to assess applications for increases to CRICOS capacity.
Recommendation 11	That the assessment and approval process for increase to CRICOS capacity is subject to the following formal timelines to allow providers reasonable timeframe to plan for marketing, recruitment and enrolment activities: Target 1 month, Limit 3 months
Recommendation 12	That the Minister explore use of legislative instruments and power to make regulations under the ESOS Act to reduce red tape and improve the performance and functions of TEQSA CRICOS processes

Sector Inequity

10. Service and Fees

COPHE members report TEQSA's regulatory burden and fees as being unfairly applied to independent providers. As largely non-self-accrediting providers, the independent sector has more exposure to regulatory application processes as reflected in Table 1.

Table 1: Applicable Regulatory Processes for University and HEPs

Regulatory Process	University (full self-accrediting)	Non-self-accrediting HEP
Renewal of Registration Applications (University)	X	
Renewal of Registration Applications (HEP)		X
Change of Provider Category		X
CRICOS registration	X	X
Self-accredit one or more courses of study		X
Preliminary Assessments of Application for accreditation of a course of study		X
Substantive Assessments of Application for accreditation of a course of study		X
Renewal of Accreditation for a course of study		X
Revoke a Condition of registration or accreditation		X
CRICOS Increase Capacity		X
Internal Review		X
Total	2	10

For dual sector providers, the costs associated with regulation across two sectors and two regulators (TEQSA and ASQA) present a significant cost to independent higher education providers.

There is also concern among members that the mooted increase in the current fees means that they are not receiving value for money in terms of the service they receive from TEQSA. Low satisfaction level from what TEQSA classify as “for profit” providers is reflected in Figure 2.

Figure 2: Satisfaction levels with TEQSA performance by market groupings.

Item	MARKET GROUPINGS – EXCELLENT OR GOOD (%)			
	University	For profit	Faith based	Other
	n=33	n=35	n=14	n=40
Timeliness of information after making a decision	82.4	33.3	72.7	60.1
Clarity of information	94.4	43.3	61.5	87.0
Actions proportionate to risks	94.7	24.0	54.5	77.2
Reuse of material	90.5	34.4	54.5	60.7
Consistency of information	81.3	44.1	64.3	76.6
Consistency of decisions	90.9	38.7	53.8	67.2
Engagement	77.4	36.4	57.1	66.4
Making process improvements	89.3	50.0	57.1	64.4
Case mgt approach: Knowledge of your organisation	71.9	32.4	53.8	59.3
Case mgt approach: Consideration of your needs	83.3	29.4	81.8	54.3

Source: Saunders, N. Learning from TEQSA's first six years, TEQSA Conference 2017.

Under the proposal to move TEQSA's fees to a full-cost recovery model, private providers stand to be most affected. This impact will mean that compliance costs will increase without any confidence in the service levels received.

COPHE recommends that the current proposal for TEQSA to move to full cost recovery be delayed to enable detailed assessment of TEQSA performance and service levels, including consideration of current review of TEQSA by the Australian Audit Office. Cost recovery models need to reflect the size and scale of the private sector and that transparent and reportable service contracts be developed as part of cost recovery implementation.

Recommendation 13	That implementation of TEQSA's full cost recovery be delayed until the performance of TEQSA's functions and service levels are established.
Recommendation 14	That TEQSA cost recovery models require the development and implementation of transparent and reportable service contracts

11. FEE-HELP Loan FEE

Students at private providers who are eligible for FEE-HELP support are required to pay a 25% loan fee. Students who enjoy a subsidised and contingent loan through HECS at public universities do not incur such a fee.

Subsequently students enrolled with an independent provider are required to loan 125% of their course costs to access HELP

The recently legislated removal of the 25% loan fee for independent universities and their undergraduate courses but not other independent providers, has created greater inequity within the independent provider sector.

Consistent with representations to Government over recent years COPHE recommends that this inequitable tax on Australian undergraduate students enrolled with independent providers be removed for all students.

Recommendation 15	That the 25% Loan Fee imposed on FEE-HELP recipient students only be abolished.
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12. Tuition Assurance

The Department of Education and Training has recently announced the 2019 Tuition Assurance arrangements, in which HEPs will be automatically subjected to a 'risk' rating as part of the FEE-HELP Levy structure. This clearly is a targeted action which has greater financial implications on these providers and their students. COPHE members consider that this narrow view of risk is not reflective of current risks facing students.

Tuition assurance schemes will therefore cover Student Visa holders (under the ESOS Act) and now FEE-HELP students (as per the HESA Act) without any scheme for fee-paying students. This is not an equal outcome for students.

The resultant impact of inequitable application of this scheme is the creation of incentive for students to access HELP loans, even when they may be able to afford to cover their tuition fees.

COPHE recommends that the Commonwealth implement a tuition protection scheme for all students.

Recommendation 16	That students who pay up-front fees to independent providers be eligible for coverage under the sector wide tuition protection scheme (TPS)
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Impact of Red-Tape

13. Time and Resources

Duplicating paperwork adds time to the process of addressing the standards and complying with the regulation. This results in time and resources at private providers being allocated to bureaucratic processes rather than providing better services to students. As small and often lean businesses, the need to invest significant time and costs into inefficient and burdensome regulatory processes impacts the quality and sustainability of the growing private sector.

Importantly, students who choose to study at private higher education providers often do so at personal cost not imposed on their peers at publicly funded and subsidised institutions. Over-regulation ultimately has the potential to impact their experience and outcomes due to investment in preparing for, dealing with, and responding to excessive regulatory processes.

14. Innovation Stifled

The value proposition of the private segment of the higher education sector is often built on offering new and innovative courses that are closely aligned to student and industry demand and can service international markets. With lengthy delays and a lack of transparency about the process times, many market facing initiatives designed to respond to student demand are lost. This “stifling” effect reduces the currency and relevancy of course offerings and in effect reduces the sector’s ability to be agile and innovative in a globally competitive sector.

15. Opportunity Costs

The inefficiency and excess of regulatory processes presents significant opportunity costs to private providers. When a provider has to wait an unreasonable length of time for a decision, a response or an outcome from the regulator, the imperative can be lost. For example, as part of strategic objectives, a private provider may wish to develop and offer a new course; increase its student capacity to accommodate demand for this course; register the course at another location to improve recruitment; or adjust an existing course. This impacts a provider’s planned student load and forward budgets.

16. Scale Impacts

There was also a concern raised by some participants that the agency (TEQSA) does not understand or take into account the differences of independent higher education providers. In extreme cases, there is a perception that TEQSA may appear biased against these provider types. For example, small-scale providers are not able to compete with larger providers, including universities, in terms of resources and yet TEQSA is seen by some to apply a one-size fits all approach in relation to policies, procedures and regulation.

17. Students punished

Importantly, the students who choose to study at private higher education providers often do so at personal cost not imposed on their peers at publicly funded and subsidised institutions. Over-regulation ultimately has the potential to impact their experience and outcomes due to investment in preparing for, dealing with, and responding to excessive regulatory processes.

Currently the exclusion of self-funding students who study at private providers from proposed Commonwealth tuition protection schemes and the imposition of a 25% loan fee on FEE-HELP recipients, effectively punishes students who may seek small, niche and high-quality rated higher education options.

Recommendations to Reduce Red-Tape in Private Higher Education

Area/Issue	Recommendation
Duplication between regulators	1. That CRICOS processes and approvals for dual sector providers be streamlined and coordinated by ASQA and TEQSA to remove duplication of evidence required
Time frames for decision	2. That statutory requirements applied to TEQSA decision making timeframes be strengthened to deliver efficiencies in the assessment model to the benefit of higher education providers and students.
TEQSA's Regulatory Model	3. That TEQSA implement strategies to ensure staff understand the operating context of the private sector including, utilising increased face-to-face engagement in assessment processes to resolve any concerns before a proposed/or final decision is reached.
	4. That TEQSA processes be reformed to acknowledge the independent/private context of the private sector in establishing risk ratings and review the effectiveness of "one size fits all" approach to risk ratings.
	5. That TEQSA decisions be measured and reported in accordance with the Regulatory Principles of necessity, proportionality, and reflecting risk as set out in the TEQSA Act.
Regulatory Creep	6. That TEQSA be required to clarify the status of application forms, Guidance Notes and other public information on the TEQSA website where there are requirements that are not contained in a legislative instrument under which the sector is regulated.
Course Accreditation	7. That TEQSA re-design its accreditation assessment to focus on evidence of course and curriculum rather than operational or broad institutional evidence that is already assessed as part of registration processes
	8. That TEQSA streamline assessment processes and fees for nested awards.
	9. That statutory timeframes for assessment and accreditation of new and existing courses be set courses is subject to the following timeframes: b) New course: Target 4 months; Limit 6 months b) Renewal course: Target 3 months, Limit 4 months.

CRICOS capacity	10. That TEQSA implement clear guidelines and methodologies to assess applications for increases to CRICOS capacity.
	11. That the assessment and approval process for increase to CRICOS capacity is subject to the following formal timelines to allow providers reasonable timeframe to plan for marketing and recruitment activities: Target 1 month, Limit 3 months.
	12. That the Minister explore use of legislative instrument and power to make regulations under the ESOS Act to reduce red tape and improve the performance and functions of TEQSA CRICOS processes
Service and Fees	13. That implementation of TEQSA's full cost recovery be delayed until the performance of TEQSA's functions and service levels are established.
	14. That TEQSA cost recovery models require the development and implementation of transparent and reportable service contracts
Loan Fee for private Students	15. That the 25% Loan Fee imposed on FEE-HELP recipient students only be abolished.
Exclusion of tuition protection for private students	16. That students who pay up-front fees to independent providers be eligible for coverage under the sector wide tuition protection scheme (TPS)

Conclusion

COPHE welcomes this opportunity and any further engagement to discuss the issues facing independent higher education providers in Australia.

We trust this report will assist the Senate Committee in understanding and ultimately reforming the cost of red-tape, over-regulation and system design inequities that currently impact private higher education providers.

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Appendix 1: The eleven recommendations of the 2013 Review of Higher Education Regulation Report

1. 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;
2. The Government should establish mechanisms for TEQSA to consult with stakeholders and receive sector advice; for example by creating an overarching advisory council with stakeholder representatives and subject experts. Such a council could also provide advice to the Minister on how TEQSA is progressing against its Strategic Plan;
3. TEQSA should detail how the principles of risk, necessity and proportionality apply to different types of providers, for example, publicly funded institutions, for profit providers and/or not-for-profit. This could be effected through a set of legislative guidelines.
4. TEQSA should identify how existing regulatory processes such as Mission-based Compacts, funding agreements and the Institutional Performance Portfolios could be used to streamline the re registration processes for established providers;
5. TEQSA should prioritise improved timeliness in delivering TEQSA's key activities of initial provider registration and course accreditation. This could be effected through a Ministerial direction to the TEQSA CEO regarding allocation of resources.
6. The Government must reduce duplication across within the regulatory architecture by requiring specific consideration of how any matter in question, for example the ESOS National Code, aligns with its other regulatory components and partners. This could be enacted through structured MoU and letters of arrangements between TEQSA, the department and other regulatory bodies to cover such items as:
 - Financial viability assessments for providers approved under HESA;
 - Risk assessment priorities;
 - Consultation forums.
7. The Government must align better the work of existing players, such as the Higher Education Standards Panel and the Australian Qualifications Framework Council and how they are structured to support a quality tertiary education system. Government also needs to address and manage concerns for the sector regarding the role of the AQF and the outcomes of the review of higher education standards in a way which usefully guides their implementation by higher education providers in support of a quality system.
8. The Government must reduce duplication between the four Acts. This could be commenced by formalising, and extending the roles of information sharing / policy advisory groups, such as NAGHEDI, the tertiary education standards setting agencies and meetings of the regulators and the department. Any requirements related to the business nature of providers must be considered against the principle of 'collect once, use multiple times', such as:
 - Corporate governance; and
 - Financial reporting.
9. The Government must identify and agree the alignment of activities between the Acts with ASQA and TEQSA that can be undertaken (i) without legislative change; and (ii) with legislative change, such as:
 - Improving information sharing provisions through identifying what data and information is available and how constraints are applied
 - Aligning the registration periods; penalty processing, nature and format of national registers and fee structures; and
 - Assigning responsibility for registering dual sector providers, fit and proper persons, and financial viability assessments.
10. The Government engage with TEQSA to agree where duplication, reporting or otherwise, can be addressed immediately; and
11. The Government identify as soon as possible how NAGHEDI's role can be formalised and strengthened with the aim of creating a single national higher education data collection agency; and include a role for NAGHEDI as the data clearinghouse / survey advisory body for TEQSA.