

SUBMISSION TO THE HIGHER EDUCATION LEGISLATION AMENDMENT (PROVIDER CATEGORY STANDARDS AND OTHER MEASURES) BILL 2020 INQUIRY

23 October 2020

Universities Australia welcomes the opportunity to make a submission on the Higher Education Legislation Amendment (Provider Category Standards and Other Measures) Bill 2020. Universities Australia is the peak body representing Australia's 39 comprehensive universities that educate more than 1.4 million students and undertake research on behalf of all Australians.

BACKGROUND ISSUES

Review of the Provider Category Standards

In 2018, Minister for Education, the Hon Dan Tehan MP, commissioned Professor Peter Coaldrake AO to review Australia's Provider Category Standards, a legislative instrument that sets the threshold requirements for each category of higher education provider, including the requirements necessary to be registered as a university in Australia. The current list of provider categories is:

- Higher Education Provider
- Australian University College
- Australian University
- Australian University of Specialisation
- Overseas University
- Overseas University of Specialisation

Professor Coaldrake's report was released in October 2019, and recommended several changes to the Provider Category Standards, including:

- the creation of a new provider category of a mature or senior non-university higher education provider (to be called a National Institute of Higher Education);
- the adoption of benchmarks for the breadth and quality of research required at universities;
- new or enhanced requirements relating to industry engagement, civic leadership, and community engagement for universities, and
- easily distinguishable provider category nomenclature. Improving and rationalising nomenclature supports the primary purpose of the provider category standards in enabling consumers to recognise and choose the most appropriate institution for their circumstances. The review recommended this be achieved by reducing the number of distinct provider categories to four:
 - » Institute of Higher Education
 - » National Institute of Higher Education
 - » Australian University
 - » Overseas University.

Universities Australia is generally supportive of Professor Coaldrake's recommendations in the report of the [Review of Provider Category Standards](#). In particular, Universities Australia is strongly supportive of the Review's affirmation of the central importance of both research and teaching as university activities. The

Review makes clear the strong academic and community expectations that universities will be both research and teaching institutions. The Review rightly noted that in general, this is a globally-held expectation, remarking on the '*common international association of universities as places in which teaching, and the creation of new knowledge are pursued*'.¹

In its **December 2019 response**, the Australian Government accepted the aim of all recommendations in Professor Coaldrake's review. However, the Government decided to rename the proposed category of a 'National Institute of Higher Education' to 'University College'. Currently, 'Australian University College' is a pre-existing provider category for non-university higher education providers developing a research capability with the intention of becoming universities within five years.

The Government's proposal will see a University College category that comprises of both institutions that are developing a research capacity preparatory to attaining Australian University status, and those accomplished higher education providers that have no intention of developing a research capacity.

As a general principle, Universities Australia supports the concept that Australian institutions that can be construed to be university-like should have a research capability that informs their teaching and exposes students to high-quality scholarship. The benefits of research-active universities are manifold and well-described in Professor Coaldrake's review.

Over decades, Australia's universities have established a strong global reputation for quality and excellence that is the envy of many nations. This is the policy rationale behind protecting the use of the title 'university' in Australia. Universities Australia is concerned that extending the use of the word 'university' to institutions without a research capability, nor an affiliation to a university with a research capability, risks causing a diminution of the strong reputation of the Australia's higher education sector. It is important to remember that the success of all Australian higher education providers, not just universities, are beneficiaries of that reputation and have a common interest in its maintenance.

Universities Australia is also concerned that the proposed use of the term 'University College' would lead to confusion amongst prospective students as to the relative status of higher education providers, as no clear way to differentiate between the different types of university colleges has been established. This detracts from the principal policy rationale of implementing the provider category standards. In addition, the use of the term 'University College' will impact on other institutions known as university colleges that exist variously as residential colleges, pathway or enabling course providers, or institutions within the current university college category.

Universities Australia continues to urge the reconsideration of the proposed university college category and suggests consideration of a different 'destination' category for accomplished higher education providers.

Research benchmarks

Universities Australia is supportive of the introduction of benchmarks for research quality and quantity for providers in the 'Australian University' category. This further affirms the vital role of universities in undertaking research that benefits the Australian community. Instituting these benchmarks reinforces the drivers of quality and excellence that underpin the success of the Australian university system. Universities Australia also notes the recognition of the Higher Education Standards Panel that universities undertake not only research of global importance, but also specialised research of national importance and supports the idea of 'national standing' for research in fields specific to Australia.² Research quality indicators, including those demonstrating research of national standing, will require careful consideration and is a matter best considered by the panel.

¹ Coaldrake, P (2019), *What's in a name? Review of the Higher Education Provider Category Standards – Final Report*, October 2019, pp.30-31.

² Higher Education Standards Panel (2020), *Amending the Higher Education Standards Framework: Provider Category Standards*, February 2020, p.14

MATTERS SPECIFIC TO THE BILL

The Higher Education Legislation Amendment (Provider Category Standards and Other Measures) Bill 2020 amends the *Tertiary Education Quality and Standards Agency Act 2011* (the TEQSA Act) to:

- replace instances of the words ‘*categories that permit the use of the word university*’ to ‘*is either the ‘Australian University’ or ‘Overseas University’ provider category*’;
- replace references to three distinct categories of Higher Education Threshold Standards to a generic reference to the ‘Threshold Standards’;
- set out procedures for the preservation and management of student records in the event of a higher education provider ceasing to operate or ceasing to be a registered higher education provider;
- make drafting updates to the *Higher Education Support Act 2003* to enable the Job-Ready Graduates Package expansion of support to Indigenous Australians;
- require that the Education Minister provide approval prior to the issue of a licence for an Australian domain name that incorporates the word ‘university’ or a word or expression that has a similar meaning; and
- provide for the Tertiary Education Quality and Standards Agency to make determinations relating to matters of research quality.

Universities Australia is supportive of the changes proposed in the Bill, as they further support the appropriate regulation of the word ‘university’. If the Government’s proposed changes to the Higher Education Provider Category Standards to allow non-research active institutions to use the title ‘University College’, additional protections are necessary to ensure that the generic term ‘university’ is reserved to only describe entities in the Australian University or the Overseas University category. Universities Australia reiterates that the extension of the title ‘University College’ to non-research active institutions confounds the standards’ objective of consumer protection and information and should be reconsidered.

Domain name licences

Universities Australia is supportive of s.29 of the Bill, which imposes approval requirements on the issue of domain names containing the word ‘university’ or conveys a substantially similar expression. This provision attempts to ensure that domain names are not used to convey a false impression that a non-approved entity is an Australian university. Universities Australia suggests that the following items are considered to improve the operation of this section:

1. *Expand coverage to all entities operating, or purporting to operate, in Australia.*
It would be possible to give the impression that an entity using a domain name is an Australian university, even without using a top-level Australian domain. For example, an entity could register the global top-level domain www.westernaustraliauniversity.com without requiring approval under the proposed s.204A. An additional provision could be inserted that requires approval for domain names that could reasonably be construed to imply that the entity is an Australian university. For example:

204B Entity not to use or register domain name without approval

- (1) An entity that is a corporation within the meaning of section 51(xx) of the Commonwealth of Australia Constitution Act must not register, use, maintain or benefit from a domain name
 - (a) with either:
 - (i) the word “university” in the domain name; or
 - (ii) a word or expression, that has the same or a similar meaning to the word “university”, in the domain name; and
 - (b) where the domain name refers to, or could reasonably be construed to imply, operations of the entity in Australia;

unless there is an approval in force under subsection (2) in relation to the issue of that licence.

- (2) For the purposes of subsection (1), the Minister may, in writing, give an approval in relation to the issue of a licence.
- (3) The Minister may, in writing, delegate the power under subsection (2) to an SES employee, or acting SES employee, in the Department.
- (4) An approval given under subsection (2) is not a legislative instrument.
- (5) A corporation must not register, use, maintain or benefit from a domain name described in subsection (1), other than in accordance with an approval given under subsection (2).

Penalty: 250 penalty units

2. *Provide for legislative guidance on the approval of domain names.*

There are many instances in which it would be appropriate to issue top-level Australian domain names to entities that are not entities in the Australian University or Overseas University category. This could include commercial entities providing ancillary services to university students or staff that have a legitimate reason to associate themselves with universities in general – for example, www.unitextbooks.com.au or www.universityjobs.com.au. Universities Australia suggests that if the Education Minister was provided with the ability to issue guidelines for the approval of regulated domain names through a disallowable legislative instrument, the efficiency and transparency of the approvals process for both universities and other entities would be enhanced.

Recommendation 1:

Amend s.29 of the Bill to expand coverage of the requirement to hold a domain name licence beyond top-level Australian domains and provide for the ability to make guidelines through legislative instrument for the approval of domain name licences.

Research quality benchmarks

Universities Australia strongly supports the connection of research quality and quantity to the provider's classification as an Australian University. The benchmarks reinforce the quality of the Australian university system and the expectation that students at a university in Australia should expect to receive an education with a strong connection to the world-recognised research performed at our universities.

However, s.15 of the Bill would create a new s.59A of the TEQSA Act, which provides for the Tertiary Education Quality and Standards Agency to determine matters relating to research quality through legislative instrument agreed by the Education Minister. Universities Australia suggests that such matters are more appropriately determined by the Higher Education Standards Panel, who possess broad, globally-recognised expertise in research. This would ensure that matters of research quality are determined in accordance with internationally recognised benchmarks, norms and understandings of research quality – the recognition of which is vital to the reputation of Australia's higher education system.

Universities Australia suggests that proposed s.59A (4)-(7) should instead make determination of matters relating to research quality the responsibility of the Higher Education Standards Panel, with the requirement to consult broadly on any such determinations. This approach is consistent with the process under which the Minister makes Higher Education Threshold Standards.

A suitable section could read:

Matters relating to the quality of research

- (4) The Minister may, by legislative instrument, determine matters relating to the quality of research for the purposes of this section.
- (5) The Minister must not make a determination under this section unless:
 - (a) a draft of the determination has been developed by the Panel; and
 - (b) the Minister has consulted each of the following about the draft:
 - (i) the Council consisting of the Ministers for the Commonwealth and each State and Territory responsible for higher education;
 - (ii) if the Minister is not also the Research Minister—the Research Minister;
 - (iii) TEQSA, and
 - (iv) the Accountable Authority for each of the Australian Research Council and the National Health and Medical Research Council.
- (6) Before the Minister makes a determination under this section, the Minister must have regard to:
 - (a) the draft of the determination developed by the Panel; and
 - (b) any advice or recommendations given to the Minister by any of the entities referred to in subsection (5)(b).

Universities Australia will continue to work with government and other stakeholders on the most appropriate benchmarks of research quality, to ensure that Australia's world-leading higher education and research system continues to provide excellent education and research outcomes for the Australian community.

Recommendation 2:

Amend s.15 of the Bill to make determination of matters of research quality the responsibility of the Higher Education Standards Panel, in consultation with other important research stakeholders.