



**National Tertiary Education Union (NTEU)**

**Senate Standing Committee on Education and Employment**

**Inquiry**

**Higher Education Legislation Amendment  
(Provider Category Standards and Other Measures) Bill 2020**

---

**Contacts:**

Dr Alison Barnes, NTEU National President

Paul Kniest, Director Policy and Research

## **Senate Standing Committee on Education and Employment**

### **National Tertiary Education Union (NTEU)**

#### **Submission**

#### **Higher Education Legislation Amendment (Provider Category Standards and Other Measures) Bill 2020**

### **Introduction**

The NTEU represents the professional and industrial interests of some 30,000 members working in higher education and research and welcomes the opportunity to provide feedback in relation to the *Higher Education Legislation Amendment (Provider Category Standards and Other Measures) Bill 2020*.

### **Summary**

#### ***University College***

For the reasons outlined below, the NTEU is recommending that the use of the term university should be limited to those providers that meet the threshold standards for a university. Therefore, instead of categorising a high performing non-university provider as a 'University College' we suggest the use of an alternative term such as 'Higher Education College.'

#### ***Research quality***

The NTEU has serious reservations about references to "world standard research" - which seem to have been taken directly from Excellence in Research Australia (ERA). We believe that the legislation must be amended to ensure that in developing the instrument to determinate the quality of research, TEQSA must not rely on the outcomes of the ERA. Given the serious questions about the integrity of the ERA results, especially the inexplicable differences in outcomes between STEM and HASS disciplines and the ability of universities to manipulate these results.

#### ***Undergraduate certificates***

The NTEU's concern about the definition of undergraduate certificates as higher education qualifications relates not so much to the provisions of this Bill but what it potentially means for the funding and regulation of higher education more broadly. From the NTEU's perspective the inclusion of higher education certificates together with the introduction of a more flexible Commonwealth Supported Place (CSP) funding envelope as introduced under the Jobs-Ready Graduate package, is intended to:

- reduce the average cost of higher education through greater use of short-term courses and sub-Bachelor qualifications, as witnessed by recent expansion in funding for these types of courses, and
- use sub-Bachelor qualifications to open up CSP funding to providers other than universities including private for-profit providers

## **The Bill**

The Bill makes the following broad changes to the higher education standards framework:

1. makes changes to provider category types to reduce the number of university provider types to either an Australian university or an Overseas university, or a new category of high performing non-university providers to be called 'University Colleges',
2. enable TEQSA to make a legislative instrument setting out factors it will use to determine the quality of research under new university research benchmarks,
3. add a reference to the Australian Qualifications Framework qualification type 'undergraduate certificate' in the definition of a 'higher education award',
4. clarify self-accrediting conditions for Australian universities with a specialised focus (formerly university of specialisation),
5. protect the use of the word 'university' in Australian internet domain names, and
6. a number of other changes including:
  - a. allowing TEQSA to extend a provider's registration,
  - b. allowing a merits-based review of TEQSA decision to change a provider's category
  - c. giving TEQSA the authority to assume control of student records.

## **NTEU Recommendations**

1. That the category name 'University College' for high-performing non-university providers be replaced with a name like 'Higher Education College' 'Institute of Higher Education'.
2. That the Bill be amended to ensure that in developing the instrument to determine the quality of research, TEQSA must:
  - take into account a variety of qualitative and quantitative factors and not rely solely on the outcomes of the ERA,
  - specify the factors taken into account for different discipline areas, and
  - specify the benchmarks, including weightings, given to different factors.
3. That the committee notes the potential implications that including undergraduate certificates might have on the nature, funding and regulation of higher education in Australia.

## 1. New 'University college' category

The NTEU understands and supports the rationale of wanting to differentiate between non-university providers of high quality and high standing many of whom have been part of Australia's higher education landscape for decades. We do however object in the strongest terms to use of the term 'University College' to describe this group of non-university providers on a number of grounds including that:

- it will create unnecessary (and perhaps intentional) confusion amongst potential students,
- it is currently used to describe university affiliated residential colleges and/or pathway colleges, and
- the term was once used to describe a provider that was in the process of transitioning toward university status under the Higher Education Protocols which preceded the Provider Classifications standards

While the NTEU understands that providers who might wish to apply for this provider category would very much, essentially for marketing purposes, want to see the term 'university' form part of this category, we would argue that this is indeed the strongest reason as to why it should not be used. The term university should be used to denote that a higher education provider has met certain threshold standards, and not as a way of attracting potential students. We are concerned that the reputation of Australia's world class universities could be undermined by either international students or others not having their expectations met on the understanding they were dealing with an organisation they believed had university status.

The use of the term university has been strongly protected in Australia and NTEU believes that it should only apply to those providers that meet the standards set out in the Higher Education Standards Framework for a university. This includes the requirement that they undertake quality research across a range of disciplines.

The NTEU would instead recommend a term like 'Higher Education College' or 'Institute of Higher Education'.

## 2. Quality of university research

The Bill proposes to amend the ***Tertiary Education Quality and Standards Agency Act 2011*** to insert a Clause 59A which requires that TEQSA:

- i) must have regard to quality of research undertaken by a registered or entity applying or re-applying for registration as an 'Australian University',
- ii) make a determination or legislative instrument setting out the factors TEQSA must have regard to in determining the quality of research We would also make the point that there is nothing stopping any of these providers from applying to classified as a university.

This provision tries to implement the Recommendation 5 of the Coaldrake [Review of Provider Classifications Standards](#) (PCS) which reads:

*Along with teaching, the undertaking of research is, and should remain, a defining feature of what it means to be a university in Australia; a threshold benchmark of quality and quantity of research should be included in the Higher Education Provider Category Standards. This threshold benchmark for research quality should be augmented over time*

The Coaldrake review suggested the following thresholds in relation to the quality of research:

*universities conduct world standard research in at least three, or at least 30 per cent of the broad (2-digit) fields of education (FOEs) where courses are delivered, whichever is greater. (p 32).*

It also recommends that by 2030 that this threshold be augmented by increasing the proportion of research achieving world standard or above to 50%.

NTEU's primary concern with this recommendation is the inherent difficulty in trying to measure the quality of research as exposed by the most recent analysis of 2018 ERA results, especially those undertaken by Emeritus Professor Frank Larkins in two recent papers, namely:

- Larkins, Frank (2019) *Research at Australian Universities: Is Excellence Really Excellent?* Centre for the Study of Higher Education (CSHE) University of Melbourne
- Larkins, Frank (2019) *Anomalies in the Research Excellence ERA Performances of Australian Universities*. Centre for the Study of Higher Education (CSHE) University of Melbourne ERA Assessment and Ratings

Larkins' analysis leads him to question:

- i) the increasing proportion of all disciplines achieving well above (5) and above (4) ratings in the ERA since 2012, and
- ii) the disparity between science, technology, engineering, maths and medicine (STEMM) and humanities, arts and social science (HASS) disciplines (See Figure 1).

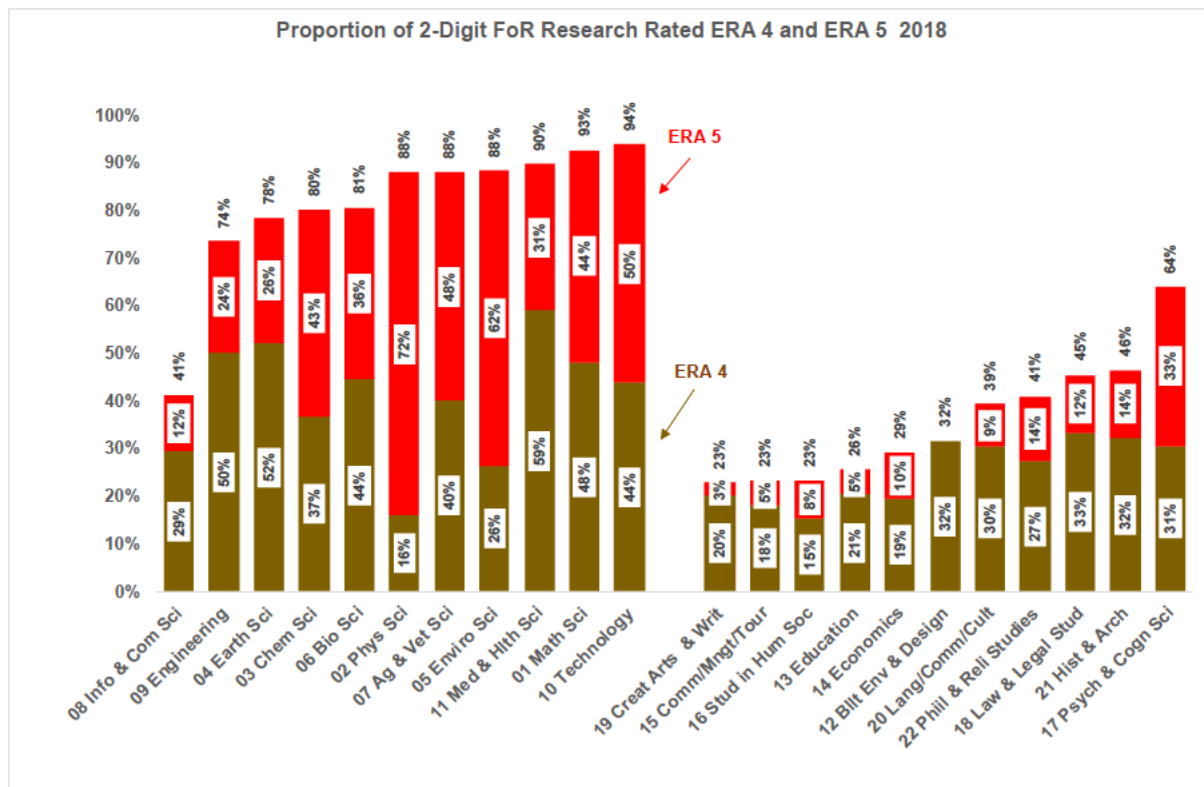
Larkins is also highly critical of the lack of transparency or disclosure in relation to ERA results and in particular lack of information about:

- the set of indicators used in different disciplines;
- the quantitative and/or qualitative world standard benchmark used in each discipline; and
- if, and how these world benchmarks have changed over time.

From this he concludes that the lack of disclosure not only makes it difficult to compare ERA rating between different disciplines but also "*a serious limitation on the capacity for informed debate and an assessment of the real changes in research 'excellence' over time*".

The NTEU has been highly critical of the ERA and the potential it presents universities to manipulate or game the system. Our concerns related to the potential impact this would have on individual researcher's capacity to exercise their academic freedom in the pursuit of their research interests. Professor's Larkin's analysis in no way eases our concerns about the way the ERA has been implemented and reported and its impact on individual researchers.

Figure 1



The Coaldrake review also recognised the severe limitations of the ERA and recommended that TEQSA measure the quantity and quality of research against a variety of measures. It specifically noted that such flexibility would allow:

*TEQSA to account for any challenges associated with using established measurement tools, such as ERA. (p34)*

Therefore, the **NTEU is recommending** that the legislation be amended to ensure that in developing the instrument to determinate the quality of research, TEQSA must:

- take into account a variety of qualitative and quantitative factors and not rely solely on the outcomes of the ERA,
- specify the factors taken into account for different discipline areas,
- specify the benchmarks, including weightings, given to different factors.

### 3. Undergraduate certificates

Under section 36-5 of *HESA 2003*, it is a legal requirement for Commonwealth supported places (CSPs) to only be given to students enrolled in a legally-recognised qualification, with funded subjects in relation to that course of study. At present, higher education certificates are not a legally-recognised qualification. The inclusion of higher education certificates as a higher education qualification therefore allows for the funding of short sub-bachelor courses meaning such a qualification can be funded as CSPs.

However, given that the government has already funded numerous short courses, many of which might be considered in the nature undergraduate certificates, we do not believe that excluding this provision from the current Bill would in and of itself necessarily address our concerns about the serious potential implications outlined below.

### ***Nature and Structure of Higher Education***

The Minister for Education has made clear his wish that Australian universities become 'world leaders' in micro-credentials. This was made apparent in the Government's higher education response package to COVID19 announced in April 2020 which included funding for 20,000 short term courses and the additional 100,000 short term courses announced as part of the 2020-21 Budget.

The desire of the government in wanting more 'flexibility' in higher education offering was noted in Minister Tehan's address to Universities Australia's conference in February, 2020<sup>1</sup> where he referenced the Noonan Review of the Australian Qualifications Framework (AQF):

*"The Noonan Review recommended a total rethink about how we view students and learning across vocational and higher education. Noonan recommends that we focus on the characteristics of the qualification rather than where the qualification is earned. It will provide us with greater flexibility, allowing students to earn qualifications across VET and higher education based on their learning requirements that better reflects the value that both streams of education provide. The recognition of micro-credentials will encourage more innovative and timely responses to student demand for courses, and employer demand for certain skills."*

As the NTEU's submission to (Stephen) Joyce *Expert review of Australia's vocational education and training system* concluded:

*.. the most urgent issues confronting the current review are what we consider to be the big picture issues confronting VET in Australia, namely:*

- 1) the need for a consistent and coherent funding framework to cover both VET and HE, and*
- 2) to consider whether competency based training developed in the 1990s remains fit for purpose.*

Our questioning of the fitness of the VET based training are neatly summarised in a report by Wheelahan and Moodie<sup>2</sup> commissioned by the NSW Department of Education that observes "*VET qualifications start with the smallest component and aggregate units of competency to make a whole qualification*". It also notes that despite efforts to widen the definition of what constitutes a competency over the years, competency-based training remains problematic because:

---

<sup>1</sup> Dan Tehan MP Speech to Universities Australia Conference 26 February 2020 (<https://ministers.dese.gov.au/tehan/speech-universities-australia-conference>)

<sup>2</sup> Leesa Wheelahan and Gavin Moodie (2011) Rethinking skills in vocational education and training: from competencies to capabilities, New South Wales Board of Vocational Education and Training (BVET)

- units of competency relate to specific skills or occupations,
- outcomes are defined in terms of existing work requirements,
- it does not cover underpinning knowledge or theory, and
- it is based on an assumption that learning outcomes can be determined in advance and measured.

The NTEU fears that the move toward short courses will by its very nature result in the adoption of narrow competency-based education which is an anathema to student attributes approach that underpins higher education.

### ***Regulation and funding***

The NTEU is not only concerned by the extent to which the use and focus on short term courses might detrimentally affect the structure and nature of higher education in Australia, but also the extent to which it might undermine the higher education regulatory and funding framework. By defining short term undergraduate certificates as a higher education qualification, it brings them within the scope of the CSP funding envelope that was introduced as part of government's recently introduced Jobs-Ready Graduate policies.

Our concerns go to the way in which the government might use short term undergraduate certificates to:

- artificially inflate the number the number of CSPs being funded
- reduce the resourcing available to educate CSPs by requiring universities to offer them at a discount rate to students (as was the case in the COVID response package), and
- use short courses, especially national priority targeted places, as a mechanism to make funding of government supported higher education places more readily available to non-university providers.

In summary the NTEU has major concerns that the inclusion of the undergraduate certificates as a higher education qualification and including them within CSP funding envelope is the first step to further deregulation and greater competition and contestability of funding within higher education. Given the comprehensive policy failure associated with the introduction of contestable funding in the VET sector the NTEU is strongly opposed any such move.

### **Conclusion**

While the NTEU is generally supportive of the provisions in the Higher Education Legislation Amendment (Provider Category Standards and Other Measures) Bill 2020, we have two recommendations:

- 1) that the use of the term 'University College' for high performing non-university providers, not be used. WE suggest the use of the term Higher Education College instead, and



- 2) that the legislation be more specific that the instrument to developed by TEQSA to determine the quality of university research about the need to include a variety of qualitative and quantitative measures

In addition, we raise serious concerns about the implications of including undergraduate certificates on the nature of higher education as well as the funding and regulation of higher education in Australia.

---

---