

Australian Catholic University

Submission to the Senate Education and Employment Legislation Committee

Inquiry into the Higher Education Legislation Amendment (Provider Category Standards and Other Measures) Bill 2020

October 2020

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EXECUTIVE SUMMARY

Australian Catholic University (ACU) welcomes the opportunity to make a submission to the Senate Education and Employment Legislation Committee (the Committee) in relation to its inquiry into the Higher Education Legislation Amendment (Provider Category Standards and Other Measures) Bill 2020 (the Bill).

ACU broadly supports the Bill but recommends some amendments as outlined in this submission.

The Bill proposes to give legislative effect to the recommendations of the *Review of the Higher Education Provider Category Standards* (Coaldrake Review) and outstanding recommendations from the *Review of the impact of the TEQSA Act on the higher education sector*. Provisions to improve the regulation of the higher education sector and some minor amendments to clarify the scope of existing legislative provisions within the *Higher Education Support Act 2003* are also included in the Bill.

ACU recommends the Senate amend the Bill in the following ways:

1. In relation to provisions related to a regulated entity which represents itself as a university, the Bill should be amended to explicitly stipulate that “University College” category providers:
 - (a) may use the word “university” in their institutional branding *only* when their full category name “university college” is used; and
 - (b) require that the words “university” and “college” be given equal prominence in such institutional branding.
2. Extensions to the period of a registered higher education provider’s registration or accreditation of a course of study should be limited so that TEQSA may only:
 - (a) extend registrations more than once for higher education providers in the “Australian University” category, as these are the most established providers (with self-accrediting authority); and
 - (b) extend accreditation of a course of study more than once for higher education providers that have been assessed as low risk.

ACU submits that the Committee should also recommend that TEQSA should clarify the mechanisms it will use to assure the quality of providers. These should be transparently communicated to providers.

3. In relation to provisions pertaining to the handling of higher education student records from a registered higher education provider, the Bill should be amended to:
 - (a) limit provisions contained in the Bill with respect to the handling of higher education student records from a higher education provider to those intended, namely, only where a provider ceases operations; and
 - (b) revise provisions in the Bill pertaining to the handling of student records to ensure they align with the *Privacy Act 1988*.
4. With respect to provisions in the Bill that domain name licensors should be required to obtain ministerial consent to use the term “university”, or a word/expression similar to “university”, in Australian internet domain names, the scope and operation of Section 204A should be revised to clarify:
 - (a) whether the new provisions will operate retrospectively, and if not, how existing domain names will be regulated; and
 - (b) how domain names registered overseas which fall under the new provisions will be treated.

COMMENTS AND RECOMMENDATIONS

ACU makes the following comments and recommendations on specific provisions contained in the Bill.

Minor amendments to the TEQSA Act to reflect the introduction of the new “Australian University” and “Overseas University” provider categories

The Bill proposes to make minor amendments to language in the *Tertiary Education Quality and Standards Agency Act 2011* (TEQSA Act) to reflect the new provider categories under the Threshold Standards, particularly the new “Australian University” and Overseas University” categories.

Recommendation

1. ACU recommends the Senate support the proposed minor amendments to the TEQSA Act to reflect the introduction of the new provider categories.

New provisions with respect to the quality of research

The Bill proposes introducing new provisions (Section 59A) to the TEQSA Act which would require TEQSA, when considering the Threshold Standards, to have regard to the quality of research undertaken by providers in the “Australian University” category (or those seeking entry to that category). This reflects recommendations made by the Coaldrake Review to include new research quality benchmarks in the Threshold Standards for providers in the ‘Australian University’ category.

The proposed new Section 59A does not limit the matters to which TEQSA may have regard, in considering the quality of the research undertaken by the relevant provider or entity.

ACU broadly supports this provision. With respect to research and standards at Australian Universities, to be spelled out in the Threshold Standards, ACU reiterates the recommendations it made to the Higher Education Standards Panel during its consultation on amendments to the Higher Education Provider Category Standards, namely:

- The following guiding principles should be strongly affirmed and maintained with respect to Australian Universities:
 - Australian Universities should, by definition, continue to be required to engage in both teaching and research. Furthermore, the benchmark standard for research at Australian Universities should be above world standard.¹
 - The nexus between teaching, research and scholarship should be inviolable for Australian universities.
 - Fundamental principles of institutional autonomy must be maintained for universities.
 - Universities fulfil, and should be expected to fulfil, important community service and community engagement obligations. These broader contributions to the community and society – locally, regionally, and nationally – should be considered an essential element of universities’ unique social licence.

Recommendation

2. ACU recommends the Senate pass the new provisions with respect to the quality of research, noting the guiding principles identified above regarding Australian Universities which should be reflected in the Threshold Standards.

¹ For further explanation see ACU’s submission to the Higher Education Standards Panel consultation on amending the Higher Education Standards Framework: Provider Category Standards. Accessible via https://www.acu.edu.au/-/media/feature/pagecontent/richtext/about-acu/leadership-and-governance/docs/202004_acu_response_heprovidercategorystandardsamendments.pdf?la=en&hash=77461066FC58BF1C3D08FCA9311A2ABB

Provisions related to a regulated entity which represents itself as a university

Section 108 of the current TEQSA Act establishes an offence and provides for a civil penalty if a regulated provider uses the word “university” in representations about itself or its operations concerning the course of study and higher education awards where:

...the entity is not a registered higher education provider registered in a provider category that permits the use of the word “university”.

The Bill proposes to amend the wording within Section 108 (sub-sections 1(b) and 2(c)) to clarify that an entity entitled to use the word “university” must be:

...a registered higher education provider registered in the “Australian University” or “Overseas University” provider category.

This amendment seeks to better reflect the new provider categories.

With respect to the new “University College” category, however, the Explanatory Memorandum to the Bill indicates that:

- The offence and/or civil penalty will not apply to providers in the new “University College” category, as long as they represent themselves as a University College, rather than a University.
- The new Threshold Standards will mandate that while a University College category provider is welcome to use the word “university” in its institutional branding, it must only do so by using the full category name “university college” and not just the word “university” in isolation.

ACU recommends amending the Bill to incorporate these provisions within the legislation. That is, rather than leaving it to the Threshold Standards, provisions should be included in the legislation to explicitly stipulate that “University College” category providers may use the word “university” in their institutional branding *only* when their full category name “university college” is used. Furthermore, the words “university” and “college” should be given equal prominence in such branding.

ACU also takes this opportunity to restate its objection, which is already on public record, to the incorporation of the word “university” (as per the proposed new “University College” category) in any description of a non-university provider. The Coaldrake Review notably recommended describing this type of provider as a “National Institute of Higher Education”. ACU strongly endorses this recommendation. ACU notes the Government’s decision to instead refer to this category of provider as “University College”, notwithstanding the recommendation of the Coaldrake Review.

Recommendation

3. ACU recommends amending provisions in the Bill related to regulated entities which represent themselves as universities. Provisions should be included in the legislation to explicitly stipulate that “University College” category providers:
 - (a) may use the word “university” in their institutional branding *only* when their full category name “university college” is used; and
 - (b) require that the words “university” and “college” be given equal prominence in such institutional branding.

Expand the definition of “higher education award” in Section 5 of the TEQSA Act to include the new “undergraduate certificates”

The Bill proposes to expand the definition of “higher education award” in the TEQSA Act to include the newly created undergraduate certificates (which developed out of the Federal Government’s Higher Education Relief Package (April 2020) COVID-19 response measure regarding short courses). This reflects the COAG Education and Skills Councils’ agreement to add “Undergraduate Certificate” to the Australian Qualifications Framework as a new higher education qualification type from May 2020 to December 2021, subject to any further extension.

Recommendation

4. ACU recommends the Senate support the Bill's provisions to expand the definition of "higher education award" in Section 5 of the TEQSA Act to include the new "undergraduate certificates".

Extensions to the period of a registered higher education provider's registration, and accreditation of a course of study

The Bill proposes to enable TEQSA to:

- extend the period of registration for higher education providers more than once.
- extend the period of accreditation of a course of study more than once.

Currently, the TEQSA Act only permits one extension without requiring TEQSA to reassess registration, and/or accreditation.

The Explanatory Memorandum to the Bill indicates the rationale behind the amendments is that:

[TEQSA] having this ability may be necessary to manage regulatory activity during the COVID-19 pandemic. It will also offer TEQSA greater flexibility to manage provider registrations into the future, particularly for low risk high quality providers that may have had a previous period of extension – including a relatively short extension period that might have been granted in response to the pandemic.

The same reasoning is given for allowing more than one extension of a period of accreditation of a course of study.

ACU submits that these provisions are short-sighted and run the risk of precipitating a decline in standards in Australian higher education. Further fine-tuning is required to ensure there are sufficient safeguards which protect against unintended consequences.

Notably, with respect to registrations, the TEQSA Act stipulates an extension *may exceed 7 years* – this is a significantly long period of time, especially if multiple extensions are to be permitted. There is a potential risk to the reputation of the entire higher education sector if TEQSA adopts a practice – or, in order to manage its workload, is compelled in the future to adopt a practice - of renewing most provider registrations without reassessing whether providers are continuing to meet the Threshold Standards (as otherwise required for registration renewals).

ACU also calls on the Senate Committee to recommend that TEQSA provide advice on the mechanisms it will utilise to assure the quality of providers on an ongoing basis if these provisions are brought into effect. This should be communicated to providers in a transparent manner with clear guidance.

Recommendation

5. ACU recommends the Senate amend the Bill to provide that extensions to the period of a registered higher education provider's registration or accreditation of a course of study should be limited so that TEQSA may only:
 - (a) extend registrations more than once for higher education providers in the "Australian University" category, as the most established providers (with self-accrediting authority); and
 - (b) extend accreditation of a course of study more than once only for higher education providers that have been assessed as low risk.

ACU submits that the Committee should also recommend that TEQSA should clarify the mechanisms it will use to assure the quality of providers. These should be transparently communicated to providers.

Provide TEQSA with the legislative authority to assume, collect and disclose higher education student records from a registered higher education provider in the event the provider ceases operations

The commentary accompanying the Bill indicates legislative amendments are intended to provide TEQSA with legislative authority to secure student records from a registered higher education provider if the provider ceases its operations. However, provisions included in the Bill appear to extend well beyond this, to all providers, and also raise concerns with respect to the operation of the *Privacy Act 1988* regarding the handling of student records. These provisions require further work and amendment, as outlined below.

The new Section 197AC in the Bill proposes amendments whereby, on request of a student, (all) registered higher education institutions will need to provide other registered higher education institutions with that student's record. This is potentially problematic and creates a process for which an existing working solution and processes are already in place within the sector. Under this reform, the onus would be on an institution to source these records following a direction from the student (notably, students often apply to multiple institutions when looking to transfer). The principle should be that students should be responsible for sharing their own records. If the onus is on the institution to do this, it will introduce a significant and unnecessary additional workload for institutions.

Section 197AC(d) is particularly problematic. It contemplates that an entity may request a student's records from another entity which the student formerly attended, but with no provision for the second entity to ensure the consent of the student. This is in direct contravention of the *Privacy Act 1988*. There is no proposed carve-out in the Bill for the requesting entity to request this personal information because it is required, or authorised by/under an Australian law or a court/tribunal order (a specific carve out in the *Privacy Act 1988*). To illustrate, this would mean for example, that:

- If ACU was the first entity in this scenario, it would need to refuse any request made under sub-paragraph (d) if it was not accompanied by evidence of the student's consent or some other carve-out in order to avoid breaching the *Privacy Act 1988*; or
- If ACU was the second entity in this scenario, it could find itself contravening the Australian Privacy Principles (APPs), specifically: APP 3 (collection of solicited personal information) or APP 6 (use or disclosure of personal information). Furthermore, it may create obligations for ACU to comply with APP 5 (notification of the collection of personal information).

Consequently, this sub-paragraph needs to be aligned with the *Privacy Act*.

Recommendation

6. ACU recommends the Senate amend the Bill to:
 - (a) limit provisions contained in the Bill with respect to the handling of higher education student records to those intended, namely, only where a provider ceases operations; and
 - (b) revise provisions in the Bill pertaining to the handling of student records to ensure they align with the *Privacy Act 1988*.

Require domain name licensors to obtain ministerial consent to use the term “university”, or a word/expression similar to that, in Australian internet domain names

The Bill proposes to introduce a new section (204A) into the TEQSA Act, to stipulate that for Australian top level domains (such as “.au”), unless the Minister (or their delegate) has provided approval, a licence must not be issued for the use of a domain name with either:

- the word “university” in the domain name; or
- a word or expression that has the same or similar name to the word “university” in the domain name.

The proposed new Section 204A requires further refinement and clarification regarding its scope and operation. Specifically, on the current wording the following is unclear and needs to be addressed:

- Is this provision intended to be retrospective? If not, how does the Government propose to regulate existing domain names that currently use the word ‘University’ outside the context contemplated by this Bill?
- Will the Government compulsorily acquire offending domains or will they be excused?
- Will domain names registered overseas be blocked in Australia? This issue is not currently contemplated in the wording of this provision.

Recommendation

7. ACU recommends the Senate amend the proposed new Section 204A provisions regarding the regulation of Australian domain names with the word “university”, or a word/expression similar to “university”, to clarify their scope and operation, namely:
 - (a) whether the new provisions will operate retrospectively, and if not, how existing domain names will be regulated; and
 - (b) how domain names registered overseas which fall under the new provisions will be treated.

Replace references to “Indigenous students” with “Indigenous persons” in the *Higher Education Support Act 2003*, to clarify the scope of “Indigenous Student Assistance Grants”

The Bill proposes to replace references to “Indigenous student” with “Indigenous Person” in Part 2-2A of the *Higher Education Support Act 2003*, to ensure that providers can use Indigenous student assistance grants to assist prospective Indigenous students as well as existing Indigenous students.

Recommendation

8. ACU recommends the Senate support the Bill’s provisions to replace references to “Indigenous students” with “Indigenous persons” in the *Higher Education Support Act 2003*, to clarify the scope of “Indigenous Student Assistance Grants”.

ATTACHMENT A - Australian Catholic University Profile

Australian Catholic University (ACU) is a publicly funded Catholic university, open to people of all faiths and of none, and with teaching, learning and research inspired by 2,000 years of Catholic intellectual tradition.

ACU operates as a multi-jurisdictional university with eight campuses, across four states, one territory, and overseas. ACU campuses are located in North Sydney (NSW), Strathfield (NSW), Canberra (ACT), Melbourne (Victoria), Ballarat (Victoria), Brisbane (QLD), Adelaide (SA), and Rome (Italy). ACU's campus in Blacktown (NSW) will open in 2021.

ACU is the largest Catholic university in the English-speaking world. Today, ACU has around 32,000 students and 2,000 staff.²

ACU is ranked first in Australia when it comes to graduate employment outcomes.³ ACU graduates demonstrate high standards of professional excellence and are also socially responsible, highly employable and committed to active and responsive learning.

ACU has built its reputation in the areas of Health and Education. ACU produces more nursing and teaching graduates than any other university in Australia, serving to meet significant workforce needs in these areas.⁴

ACU has four faculties: Health Sciences; Education and Arts; Law and Business; and Theology and Philosophy. This consolidation of ACU's previous six faculties in 2014 has created a more efficient and competitive structure focused on the needs of industry and employment partners. ACU has also moved towards the adoption of a shared services model where suitable, to improve efficiencies, internal processes and better allocate resources.

ACU is committed to targeted and quality research. ACU's strategic plan focuses on areas that align with ACU's mission and reflect most of its learning and teaching: Education; Health and Wellbeing; Theology and Philosophy; and Social Justice and the Common Good. To underpin its research intensification efforts, ACU has appointed high profile leaders to assume the directorships, and work with high calibre members, in its research institutes.⁵ ACU is a world-leading research university in its priority areas of education, health, and theology and philosophy.

² Student numbers refer to headcount figures while staff numbers refer to full-time equivalent (FTE).

³ QILT 2020 Graduate Outcomes Survey, Longitudinal, full-time employment (August 2020).

⁴ Department of Education and Training, '2017 Special Courses' in *Selected Higher Education Statistics – 2017 Student Data* (2018). Accessible via <https://www.education.gov.au/selected-higher-education-statistics-2017-student-data>.

⁵ See Australian Catholic University, 'Research at ACU' via <http://www.acu.edu.au/>.