

MONASH UNIVERSITY

Submission to the Senate Inquiry

Tertiary Education Quality and Standards Agency Bill 2011

And the

***Tertiary Education Quality and Standards Agency (Consequential Amendments and
Transitional Provisions) Bill 2011***

Answer to question taken on notice on 19 April 2011

and supplementary information

29 April 2011

Question taken on notice regarding clause 196 of the TEQSA Bill (page 14 of the transcript)

Clause 196

It is difficult to arrive at a simple solution to the power described in clause 196 being such a very broad, unqualified power to disclose higher education information to the public, noting that the definition of "higher education information" is also very wide (any information about a regulated entity that TEQSA obtains and that relates to TEQSA's functions, and is not personal information).

The expression "that relates to TEQSA's functions" is a very broad statement and could be anything to do with the provision of higher education. There is no real qualification on the power.

On the other hand, clause 189 states that (for instance) information that relates to an offence or possible offence under the TEQSA Act or the ESOS Act, or to a contravention of the TEQSA Act, ESOS or HESA or regulations made under those Acts, may (only) be disclosed to the persons as set out in clause 189(1). In addition, clause 204 provides that TEQSA may make Guidelines for clause 189.

As a minimum change, Monash University submits that clause 196 should at least exclude the provision of information referred to in clause 189. This is especially so, as clause 189 sets out specific rules about the disclosure of such information. It is acknowledged that it could be argued that clause 189 being specific overrides clause 196, however it is much better to have this made quite clear.

A further submission is that in addition to the express clause 189 carve out, clause 196 be included in the table in clause 204, so that Guidelines (which are by legislative instrument - eg regulations) might be developed by TEQSA (although it would not be compelled to do so). This would encourage some discussion and framework around what is otherwise a quite unbounded provision.

It is acknowledged that the Part 2 principles of regulatory necessity, risk and proportionality should appropriately restrict TEQSA in releasing such information. However, to have an effective remedy (given harmful information release cannot be wound back), a process of notification would be helpful.

Therefore, it is suggested that a qualification be included that where TEQSA intends to release information specific to an individual provider which is confidential or otherwise likely to harm its reputation, that it give reasonable notice of that intention.

This would not *substantively* limit the clause further, but *procedurally* would give a means to limit unfair and excessive disclosure. It also means that if the definition of 'confidential or otherwise likely to harm its reputation' is ambiguous, TEQSA can opt to err on the conservative side and give notice on a wide range of matters planned to be released, if not all matters.

Supplementary information regarding Monash University's submission to the Inquiry

Clause 26

Monash University submits that the wording of this clause is problematic and confusing.

The Explanatory Memorandum asserts that "if the other entity does not comply with the Threshold Standards, TEQSA may impose sanctions on the registered higher education provider's course accreditation or registration status."

However, if the other entity is for example an overseas university, it cannot reasonably be expected that it will, in the words of the Explanatory Memorandum "comply with the Threshold Standards". It will have its own standards to comply with and they will not be identical to the Threshold Standards.

Monash University suggests that a simple solution to this aspect of the wording is for clause 26(2) to state that "The provider must ensure that the other entity provides the course of study or the part of the course of study consistently with the Threshold Standards or equivalent standards." The underlining shows the suggested changes. The first underlining corrects what appears to be an inadvertent omission.

In addition, the EM should be amended to state that "if the other entity does not comply with the Threshold Standards or with equivalent standards, TEQSA may impose sanctions....etc"

We understand the Department's view is that clause 26 is not intended to provide for issues related to credit-transfers between courses of study.

However, clause 26 on its current wording does not exclude credit-transfer arrangements.

Because it is a very significant issue, and it bears on the self-accreditation authority under which the universities assess credit-transfers by equivalence standards, an explicit exclusion of credit arrangements would be appropriate. The changes suggested above to clause 26(2) and the Explanatory Memorandum would deal with a conjoint degree offered with an overseas provider, for example, but would not necessarily exclude credit arrangements.

It is submitted that these arrangements should be completely removed from clause 26, and that a new sub-clause 26(3) be added:

"This section does not apply to credit or cross credit arrangements wherein a provider determines that prior or concurrent experience, study or qualifications will be taken to confer credit for part of a course provided by the provider."

Supplementary information regarding Monash University's submission to the Inquiry

Clause 167

The Committee (through Senator Back at page 15) asked whether it would strengthen the legislation to include in clause 167 an indication of the range of skills sets that the Minister might consider for the Panel members, so as to ensure there are no gaps or too much competition in the same space.

Monash has submitted that the wording be changed as follows:

"the members of the Higher Education Standards Panel should have demonstrated expertise in the setting of standards in higher education and their implementation at an institutional level".

If this is not accepted then Monash University submits a reasonable alternative is for clause 167(2)(a) to be amended to - "ensure an appropriate balance of professional knowledge and demonstrated expertise, including expertise in the setting of standards in higher education and their implementation at an institutional level".

This would give the Minister an indication of at least one important type of expertise that should be present in the Panel.