RMIT UNIVERSITY

RMIT University submission to the Senate Education and Employment Legislation Committee

Tertiary Education Quality and Standards Agency Amendment Bill 2014

Introduction

RMIT University welcomes the opportunity to make a submission to the Senate Education and Employment Legislation Committee on its inquiry into the *Tertiary Education Quality and Standards Agency Amendment Bill 2014.*

RMIT provides its comments on the Bill and its proposed amendments to a significant piece of legislation for the higher education sector, with particular regard to:

- Balancing rigour and efficiency in the application of the *Tertiary Education Quality and Standards Agency Act 2011* ("the Act")
- The independence of the Tertiary Education Quality and Standards Agency ("TEQSA")
- Opportunity for further regulatory reform across the sector.

RMIT also notes the recent establishment of the TEQSA Advisory Council and its members as a representative body for the sector under its terms of reference to minimise regulatory intervention for Australian higher education providers.

Proposed amendments to the Act

The University acknowledges the Bill's proposed amendments to the Act in relation to the following:

- Quality assessments
- Delegation of decisions
- Extending periods of accreditation or registration
- Commissioners and Chief Executive Officer
- Notification of decisions to providers
- Ministerial directions and approval of fees charged.

Broadly, RMIT supports the intent of the Bill to implement recommendations arising from the 2013 Dow-Braithwaite *Review of Higher Education Regulation* ("the Review"), realign the focus and timeliness of TEQSA's regulatory activities (particularly through the repeal of Section 60 to remove quality assessments from the regulatory function), and to advance appropriate deregulation for the higher education sector.

RMIT welcomes the changes as a first step in the reform process. Comments below focus on the key matters for further consideration.

Impacts and considerations

1. Efficiency of regulatory functions

The proposed changes are premised on streamlining and efficiency. RMIT notes that the amendments to delegations of functions and powers under Subsection 199 are expected to result in faster course accreditation including by increasing flexibility in decision making, and

providing opportunity for internal appeal, potentially with less oversight. However, this should not detract from a rigorous approach to support the high quality and reputation of the Australian higher education sector.

RMIT considers that care must be taken to ensure that there are no likely ramifications of prioritising efficiency over quality, and that efficiency considerations are balanced against the core principles of the Act, namely to reflect risk, proportionality and necessity ("the Basic Principles").

- The ability for TEQSA to delegate under the amended provisions has not been clearly defined and it would be useful to clarify the delegation of functions and powers under Subsection 199 in the context of the Basic Principles of the Act. TEQSA's delegation of decision making responsibilities needs to be underpinned by a coherent and consistently applied principle-based risk assessment framework to inform its case management model.

RMIT supports that it is necessary for well-qualified experts to exercise some autonomy, provided that there are effective appeal processes of decisions. However, RMIT considers that the proposed amendments via Section 21(6) and the new Section 37A –that will enable TEQSA to extend periods of registration beyond seven (7) years – could present a real risk in ensuring consistency in the approach to, and assessment of, a provider's ability to meet the Higher Education Standards Framework[1], particularly when the delegations provisions devolve decision making powers across the Agency. Although TEQSA decision makers must operate in accordance with the Basic Principles, this may not necessarily mitigate the frequency or length of extensions granted through regulatory activity.

- RMIT supports the position of Universities Australia that upper limits on the duration of extensions should be considered to guide application of the three Basic Principles, and to ensure the integrity of the regulated sector. Consistency in the approach to regulatory activities is critical to representing good practice.

2. The independence of the regulator

The independence of the regulator (both perceived and actual) is fundamental to sector confidence and to international recognition of its role in supporting the quality of Australian higher education. In a global market for higher education and research services, such confidence is crucial.

Therefore, the relationship of the Minister to the Commission and Chief Executive Officer ("CEO") and the extent of ministerial powers under the amended Act should be clarified.

Although the Explanatory Memorandum identifies the amendment at Section 136(1) is directed towards improving operational performance across the Agency it is not clear how the Basic Principles would guide such directions, if at all, particularly for directions made in relation to TEQSA's exercise of its powers.

RMIT notes that there are other legislative examples of additional conditions or supporting process building in around the use of Ministerial powers that could form an administrative model (see e.g. the Ministerial direction power under the Australian Securities and Investments Commission Act).

1.This issue has previously been communicated by Professor Dow, where he spoke of his anxiety over the impact of many case managers interpreting the Higher Education Standards Framework differently.

- RMIT supports the position of Universities Australia that the Principles of necessity and proportionality should extend to Ministerial directions to frame the use of these powers.

3. Opportunity for further reform

The principal focus of the Bill is to streamline TEQSA processes and output as a first step toward reducing the regulatory burden on higher education providers, but there remains opportunity to identify amendments for broader alignment of regulatory activities across the sector. RMIT considers that the Bill has limited impact for self-accrediting institutions, operating under multiple regulatory frameworks whose core regulatory activity is renewal of registration.

For instance, the Bill does not respond to the Review's recommendation that the Government *'reduce duplication within the regulatory architecture by requiring specific consideration of how … the ESOS National Code, aligns with its other regulatory components and partners'*[2], or address the scope for a single regulator (i.e. TEQSA and the Australian Skills Quality Authority).

Indeed, extending periods of registration and accreditation will support non-self-accrediting institutions, but it is unclear if it will enable consideration of competing registration periods under other regulatory frameworks which is crucial (e.g. *Education Services for Overseas Students Act 2000*; *National Vocational Education and Training Regulator Actor 2011*).

- RMIT reaffirms the need for further legislative review to enable more holistic regulatory reform across the higher education sector. As a first step, the Bill could give clearer effect to TEQSA's powers in regard to accommodating competing provider registrations under other regulatory frameworks.

With the announcement of the TEQSA Advisory Council (a recommendation of the Review), the Bill also provides an opportunity to consider whether it should be established under the legislation

Conclusion

In its current form, RMIT considers that the Bill responds to the intention to streamline regulatory functions and minimise the regulatory burden for higher education providers, and will provide significant improvements to the sector. As discussed, RMIT considers there is further scope for the Basic Principles to frame aspects of the proposed amendments to give clearer effect to their intention.

More broadly, RMIT notes that there are other proposed policy changes and activities underway that have potential implications for tertiary education quality settings, and highlight the need for effective regulation. They include the proposed extension of Commonwealth-subsidised tertiary funding to non-university providers, the possible deregulation of student fees, ongoing Government responses to the PhillipsKPA *Review of University Reporting* and to proposals from the Commission of Audit. Regulatory certainty is required to support tertiary stakeholders plan with confidence. RMIT looks forward to working with Government to develop an ongoing regulatory reform agenda that is developed with reference to the broader policy context and that allows stakeholders to advise on implications and possible approaches to reform.

2. Dow-Braithwaite, *Review of Higher Education Regulation* Report ("the Review") p 58