

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

Overview

The IRU supports the *Higher Education Legislation Amendment (Provider Category Standards and Other Measures) Bill 2020* (the Bill).

The Bill supports the substantial overhaul of the types of higher education provider that guide the Tertiary Education Quality and Standards Agency's (TEQSA) registration of higher education providers. The changes flow from the 2018 Review of the higher education provider category standards (Coaldrake review).

The Bill's changes are essentially minor. The major work will be done through changes to the Higher Education Standards Framework. The IRU largely supports the changes proposed to the Standards Framework as set out in our [response](#) to the Higher Education Standards Panel earlier in 2020.

In particular, the IRU supports the tighter requirements for *university* standing, which the Bill's Quality of research provisions at item 15 of Schedule One support. This appears to be the one area of contention with the Bill.

The IRU's main concern with the implementation of the Review outcomes is the unfortunate decision of the Minister for Education, Mr Tehan, to rename the proposed *National Institute* category as *University Colleges*, immediately recreating the potential for confusion between a *University* and other providers. The Bill does not directly touch on this question.

The IRU submission has the following sections:

1. the task of the Review of the Provider Categories;
2. the research test proposed to be a *university*;
3. changes in the Bill not related to the provider categories; and
4. a detailed reading of the Bill, item by item.

Recommendation

The IRU recommends that the *Higher Education Legislation Amendment (Provider Category Standards and Other Measures) Bill 2020* be passed.



Review of the Higher Education Provider Categories

The review of the provider category standards had two main objectives:

- to confirm the meaning of *university* in Australia, with requirements for research, teaching and engagement, that would distinguish *universities* from other providers; and
- determine a way to identify and recognise the more capable of the other higher education providers, as leading teaching focused institutions.

The review delivered on these objectives.

The review recommended strengthening the test for being a *university* in several ways including:

- engagement with employers, industry, and the professions in areas in which it offers courses of study;
- strong civic leadership, engagement with its local and regional communities, and a commitment to social responsibility;
- and enhanced requirements for research, which are considered further in the next section.

The Review proposed to create a category of *national institutes* for the leading teaching focussed institutions, including university owned colleges.

The Minister for Education, Mr Tehan, largely endorsed the Review's proposals but chose to rename the new *National Institute* category as *University Colleges*, immediately maintaining the potential for confusion between a *university* and other providers.

The research test for being a *university*

The one possible area for concern with the Bill is the Quality of research provision (item 15 of Schedule One).

The research requirements the Higher Education Standards Panel proposes are:

“The undertaking of research that leads to new knowledge and original creative endeavour and research training are fundamental to the status of a higher education provider as an ‘Australian University’. To be registered and remain registered in the ‘Australian University’ category, the higher education provider:

- from 1 January 2030, undertakes research at or above one or both of the benchmark standards that leads to the creation of new knowledge and original creative endeavour in:
 - at least three, or at least 50 per cent, of the broad (2-digit) fields of education in which it delivers courses of study, whichever is greater; or
 - all broad (2-digit) fields of education in which it has authority to self-accredit, in the case of a university with a specialised focus.”

The benchmark standards for research proposed are:

“**research that is ‘world standard’** measured using best practice indicators; and/or

research of national standing in fields specific to Australia, in the case of research that is not easily captured by existing standard indicators.”



The Bill at Schedule 1 item 19 adds a new paragraph 59A that states that TEQSA must have regard to the quality of the research undertaken by the provider when considering the Threshold Standards as they relate to research. It further states that TEQSA may determine how it will assess 'quality of research' which has effect only if approved by the Minister. The Minister's approval is subject to parliamentary disallowance.

The question of how TEQSA determines whether the current research threshold has not previously been made formal. With the higher thresholds proposed the capacity to set out how the assessment will be done, with scope for scrutiny through the disallowance process, is useful.

The outcome is that for TEQSA to confirm that a university or prospective university meets the research requirements of the standards, it must consider the quality of the research. It provides the opportunity for an explicit framework for this assessment but does not require that this option be taken up.

Any instrument determining what is 'quality of research' is subject to disallowance. Disallowance has reasonable efficacy since there is no requirement that there be a determination for TEQSA to assess research quality. This means that disallowance would not prevent decisions, just prevent use of a given set of measures.

IRU members consider that they meet the proposed test of research in fields of education they deliver in. Assessment of the benchmarks should use the outcomes of the Excellence in Research for Australia exercise as the main guide to world standard research.

Issues not related to the provider categories

In addition to changes related to implementing the recommendations of the 2018 Review of the higher education provider category standards, Schedule 1 of the Bill:

- simplifies the description of standards to being Threshold Standards;
- introduces a measure to preserve and protect the academic records of students whose higher education provider has ceased to exist; and
- makes a small number of other measures intended to strengthen the TEQSA Act's administration and the Tertiary Education Quality and Standards Agency's (TEQSA) regulatory role.

These elements of the Bill have IRU support and should not be controversial.

The IRU agrees with the Bill's aim to pull back to 'Threshold Standards' throughout. This is a sensible approach and is a final removal of the initial ideas for TEQSA which left open having standards beyond threshold to recognise better than satisfactory outcomes.

The Bill, Schedule 2, amends the *Higher Education Support Act 2003* to replace references to 'Indigenous students' with 'Indigenous persons'. This now appears superseded by a parallel change made in the Job Ready Graduates legislation.



Detail of the Bill

Timing

The amendments concerning the changed provider categories will commence at a day to be set through to one year after royal assent. This allows changes to the Provider Categories and to the Act to commence at the same moment.

The other changes to the TEQSA Act commence on royal assent.

1. Schedule 1 - Higher education standards and other amendments

Part 1 – Higher Education Standards

Item 1 Section 4

The item clarifies that self-accrediting providers can be self-accrediting for some but not all parts of their organisation.

Items 2-5 Section 5 Division 3 – Definitions

The Minister stated in his second reading speech that “these amendments will present the threshold standards as a single unified framework, instead of four distinct types of threshold standards. This will enable the structure of the threshold standards instrument to be simplified, making it clearer for providers, students and others to read and use.”

This removes unused power to have multiple sets of standards.

- Changes the definition of Higher Education Standards Framework to mean:

- (a) the Threshold Standards; and
- (b) any other standards made under paragraph 58(1)(b).

Paragraph 58 (1) (b) relates to the Minister’s authority to make the standards, specifically the Provider Category Standards.

- Changes the definition of “Provider Category Standards” to “Threshold Standards”.

Repeals the following definitions:

- (a) definition of Provider Category Standards;
- (b) definition of Provider Course Accreditation Standards;
- (c) definition of Provider Registration Standards.

- Replaces the definition of *Threshold Standards*

Threshold Standards means the Threshold Standards made under paragraph 58(1)(a)

Items 6 to 10, 18

These items update the Act for the new terminology of “Australian university” or ‘Overseas university”



Item 11

Inserts a new Paragraph 45 (2A) to clarify that a specialised university does not have a broad power to self accredit in any area it wishes but only in its area of expertise plus any other area that TEQSA separately approves for it.

Items 12, 13, 16, 17

Updates language to refer to “Threshold Standards” as the standard set of standards.

Item 14 Making the standards

This reworks subsection 58(1) to state that the Minister may make as Higher Education Standards Framework:

- (a) threshold standards; and
- (b) other standards

with at present no known intent to use the power under (b).

Item 15 Quality of Research

This new section deals with the Threshold Standards as they relate to research.

A new paragraph is inserted called 59A and states that TEQSA must have regard to the quality of the research undertaken by the entity or provider. It further states that TEQSA may determine how it will assess ‘quality of research’ which has effect only if approved by the Minister. The Minister’s approval is subject to parliamentary disallowance.

Item 19 application

Makes clear that the changes apply to decisions made once the Bill is passed, and to applications and the like in train. It also ensures decisions in force under the current arrangements continue.

Part 2 – Other Amendments

Item 20 Introduces the term undergraduate certificate to the definition of higher education award to allow for Commonwealth Government funding support for short courses introduced during COVID - 19.

Item 21 adds a definition of higher education student records

Items 22 to 27 tidy up the Act to ensure decisions not to approve a change of provider category are subject to review and to allow TEQSA more freedom to extend registrations where it wishes.

Item 28 Access to student records

These changes will bring into force the promises made by Government in announcing the job Ready Graduates package, namely that

- TEQSA can assume control of student records from higher education providers that cease operations. There are civil penalties of 150 units and 300 units allocated if TEQSA instructions are not complied with.
- a student, when transferring one provider to another, can request that his/her student records be provided to the new provider.



- the second provider can request the student’s records from the first provider.
- TEQSA to provide student records when requested by the student, with financial compensation to the student if TEQSA does not comply.

Item 29 University domain names

Inserts new section 204A which states that a licence must not be issued for the use of a domain name with the word “university” or a word similar to “university” unless there is approval from the Minister.

Item 30 Application

The various changes take effect for decisions made once the Bill has assent and will apply to

- applications and registrations made before the assent; but
- to student records and domain name issues that are based in events once the Bill is passed.

2. Schedule 2—Indigenous student assistance grants

These amendments relate to the HESA Act 2003, not the TEQSA Act.

Items 1 to 4 relate to the change from the term “Indigenous students” to “Indigenous persons”.

The Government claims this will allow universities to assist prospective students who are Indigenous rather than just enrolled students. This does not appear to be controversial.

Item 5 The definition of Indigenous person has the same meaning as in the Indigenous Education (Targeted Assistance) Act 2000 which is:

- (a) a member of the Aboriginal race of Australia; or
- (b) a descendant of the Indigenous inhabitants of the Torres Strait Islands.

23 October 2020