



Australian Government
Department of Education

Acting Secretary
Mr Robert Griew

Ms Julia Agostino
Secretary
Senate Education and Employment Legislation Committee
PO Box 1600
Parliament House
CANBERRA ACT 2600

Dear Ms Agostino

Submission to the Senate Education and Employment Legislation Committee inquiry into the Tertiary Education Quality and Standards Agency Amendment Bill 2014

Thank you for your letter of 9 April 2014 inviting a submission to the Tertiary Education Quality and Standards Agency Amendment Bill 2014 (the Bill) inquiry. I welcome the opportunity to provide the Senate Education and Employment Legislation Committee (the Committee) with further information on the proposed amendments to the Tertiary Education Quality and Standards Agency Act 2011 (the TEQSA Act).

The TEQSA Act established the Tertiary Education Quality and Standards Agency (TEQSA) as the national body responsible for registering higher education institutions and accrediting courses of study. TEQSA commenced operations on 30 July 2011 and began its functions on 29 January 2012.

The previous Government commissioned the independent Review of Higher Education Regulation (the Review) to address concerns about the effectiveness of Australia's higher education regulatory framework. On 23 October 2013, the Government endorsed all eleven Review recommendations, some of which would necessitate amendments to the TEQSA Act.

The findings of the Review Report were informed by extensive consultations, with input received from universities and other higher education institutions, representative peak bodies, standards bodies, advisory bodies and individuals. Through June and July 2013, over 40 consultation meetings and teleconferences were conducted and more than 60 written submissions were received.

The Review Report has been very well received by the higher education sector and implementation of the recommendations is keenly anticipated. The measures proposed in the Bill are in direct response to key recommendations made in the Review and will support TEQSA to focus on its core functions of provider registration and course accreditation and the development of more efficient processes around these functions.

I have attached information addressing the terms of reference. I hope the information provided is of assistance to the Committee.

Yours sincerely

Robert Griew

28 April 2014

Attachment A

Quality (Thematic) Assessments

In line with the Review's recommendations, the Bill proposes to remove TEQSA's thematic assessment function. The thematic assessment function enables TEQSA to conduct sector wide reviews on particular issues that may be relevant to a number of higher education institutions or courses, or broader systemic issues. While the Bill proposes to remove this "quality assessment" function, it makes no change to TEQSA's core responsibilities in relation to assuring quality.

The only quality assessment which TEQSA has carried out since its establishment was the widely criticised assessment of third party arrangements. On 5 April 2013, TEQSA released a survey, comprising 47 pages and 136 questions, on third party arrangements to all higher education institutions. The sector was highly critical of the methodology used and the amount of time and resources required to complete the assessment. Doubts were also raised as to how the information collected could be used to improve or enhance the quality of third party arrangements. To date, TEQSA has not provided any analysis or released the results of the third party arrangements survey. Removal of TEQSA's thematic assessment function will remove TEQSA's ability to compel institutions to participate in such assessment reviews.

The Review presented strong evidence to support the removal of TEQSA's thematic assessment function. Higher education institutions already participate in internal and external processes, such as benchmarking for example, across disciplines or by structure such as faculty reviews, assessment moderation, peer review and professional accreditation, to assure quality. As such, it would be more effective to allow TEQSA to focus on the timely delivery of its core functions of registering providers and accrediting courses, rather than design and delivery of surveys like the third party example.

TEQSA plays a vital role in assuring the quality of Australia's higher education, and will continue to do so, through its application of the Higher Education Standards Framework (the Standards). When registering an institution or accrediting a course, TEQSA assesses and determines an institution's compliance with the Standards. The Standards include requirements for institutions to demonstrate their ongoing academic quality and integrity of their higher education operations. The Bill does not impede TEQSA's ability to collect, analyse, interpret and disseminate information in relation to quality assurance practice and quality improvement in higher education (as provided for in the functions of the TEQSA Act under section 134). As such, TEQSA can still undertake broader quality-related work on issues that affect the sector as a whole.

Delegation of decisions

To enable swifter decision-making and provide applicants with access to internal review of decisions, the Bill proposes to improve TEQSA's capacity to delegate its functions and powers. The TEQSA Act currently restricts the delegation of functions and powers to specific TEQSA staff. This restriction has contributed to a backlog in provider registration and course accreditation applications. Further, where decisions are made at the highest levels within TEQSA, applicants are prevented from accessing TEQSA's internal review mechanisms. As a result, applicants seeking to appeal a TEQSA decision must seek review through the Administrative Appeals Tribunal. The measures proposed in the Bill would enable TEQSA to delegate any, or all, of its functions and powers, (but not the power to make, vary or revoke a legislative instrument) to a Commissioner, member of the staff of TEQSA (Australian Public Service Executive Level 1 or higher or equivalent), a Commonwealth authority or a person holding office or appointment under a law of the Commonwealth.

Extending periods of accreditation or registration

Currently under the TEQSA Act, when TEQSA grants an application for registration to become a higher education provider, TEQSA is required to determine the period for which the applicant is registered and that period must not exceed 7 years. Similarly, where a higher education provider applies to TEQSA for a course of

study to be accredited, TEQSA must determine the period for which the course is accredited and this period must not exceed 7 years.

To ensure TEQSA has maximum flexibility to manage the registration and accreditation processes, the Bill proposes to enable TEQSA to extend, on its own initiative, the period of registration and accreditation and to enable TEQSA to extend those periods beyond the current 7 year period. This will contribute to more efficient regulatory practices and help reduce regulatory burden on providers.

An example of where this would be beneficial is where a higher education institution may be a registered provider with multiple course accreditations under both the TEQSA Act and the Education Services for Overseas Students Act 2000 (the ESOS Act). Under the ESOS Act, TEQSA is the designated and delegated authority for higher education institutions and is responsible for approving institutions and providers of Foundation Programs and English Language Intensive Courses for Overseas Students (ELICOS) courses of study that wish to deliver courses on Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS). Under the ESOS Act providers can be registered for a period of between 2 to 5 years.

Approximately two-thirds of all higher education institutions registered by TEQSA also have to meet the requirements of the ESOS Act. In effect, TEQSA is regulating the majority of higher education institutions under two separate pieces of legislation. The parallel operation of the TEQSA and ESOS Acts creates complexity and regulatory burden for providers, as they are faced with two registration processes, two course approval processes and two sets of standards (the Standards and the National Code). The proposed measures will enable TEQSA to extend the periods of accreditation and/or registration so they are better aligned, enabling more efficient processes for both the provider and TEQSA.

The appointment of Commissioners

The Review recommended that consideration be given to reducing the number of TEQSA Commissioners. However, the TEQSA Act does not currently permit a reduction in the number of Commissioners. The TEQSA Act requires the appointment of a Chief Commissioner (who is also the Chief Executive Officer), two part-time and two full-time Commissioners. The proposed amendments would:

- remove the requirement to appoint a specific number of Commissioners;
- remove the requirement to appoint a specific number of part-time and full-time Commissioners;
- separate the roles and responsibilities of the Chief Commissioner and the Chief Executive Officer;
- provide for a minimum of two and a maximum of five Commissioners; and
- reduce the quorum to two Commissioners.

To accommodate the separation of the roles of Chief Commissioner and Chief Executive Officer (CEO) and the appointment of fewer Commissioners, the Bill includes transitional arrangements relating to the incumbent TEQSA Commissioners' appointments. The Bill provides that the Chief Commissioner's appointment will be terminated at the end of 21 days from the day on which the Act receives the Royal Assent. All other Commissioners' appointments will be terminated at the end of a 3 month period beginning on the day the Act receives the Royal Assent. All current Commissioners (including the Chief Commissioner) will be able to reapply for the positions under the amended TEQSA Act.

The measures proposed to reduce the number of Commissioners materially changes these appointments and therefore necessitates ending appointments and potentially making new appointments. Likewise, when the previous government introduced the Skills Australia Amendment (Australian Workforce Productivity Agency) Bill 2012 (Skills Australia Amendment Bill) to amend the *Skills Australia Act 2008*, the Skills Australia Amendment Bill enabled Skills Australia to be replaced with a new agency, the Australian Workforce and Productivity Agency (AWPA). To enable this change, the Skills Australia Amendment Bill removed the six incumbent members of the Skills Australia board and provided for the appointment of nine new members to the AWPA. All incumbent Skills Australia members were eligible to apply for appointment as AWPA members.

The Bill also proposes to bring the TEQSA Act into line with standard statutory termination provisions by updating the existing termination provisions to accord with the current Commonwealth drafting practice. This will ensure consistency across the statute book regarding the grounds on which statutory appointments can be terminated.

The roles and responsibilities of the Chief Commissioner and the Chief Executive Officer

Separating the roles and responsibilities of the Chief Commissioner and the CEO provides additional flexibility in the governance structure of TEQSA. There are established benefits to drawing a distinction between the day-to-day management and administration of an entity and the formulation of policy and priorities, and this structure is commonly seen in corporations with the separate roles of the Chair of the governing board and the CEO.

This separation will enable the Chief Commissioner to focus on leading the Commission in delivering timely regulatory decisions, including the formulation of strategic priorities. The CEO will manage the day-to-day administration, including staffing decisions (as the Head of the agency under the Public Service Act 1999), development of recommendations to the Commission, and preparation of corporate documents such as financial reports and annual operational plans.

Currently, the Chief Commissioner and CEO is directly responsible for the expenditure of public money under the Financial Management and Accountability Act 1997. With the commencement of the Public Governance, Performance and Accountability Act 2013 from 1 July 2014, responsibility will be placed on the CEO.

Notifying providers of decisions

These amendments, suggested by TEQSA, aim to remove requirements to provide unnecessary information to applicants and to align requirements to provide notification within 30 days of a decision. The TEQSA Act currently requires TEQSA to notify applicants of its decision to grant or reject an application for registration, including its reason for deciding on the provider category in which the institution has been registered. Under the proposed amendments, TEQSA will not have to notify successful applicants of the reason for deciding on the provider category, unless TEQSA has registered them in a different category from that for which they had applied.

The TEQSA Act allows for a higher education institution to apply to TEQSA to have a condition of registration varied or revoked. TEQSA must provide reasons for its decision to vary or revoke a condition of registration. Under these amendments, if a provider applies to have a condition of registration varied or revoked and TEQSA agrees to the request it will not have to provide reasons for its decision. Consistent with other decisions under the TEQSA Act, this amendment will provide that an institution must be notified within 30 days of TEQSA's decision to impose administrative sanctions.

Scope of ministerial directions

The TEQSA Act currently allows the Minister to give a direction to TEQSA if the Minister considers it necessary to 'protect the integrity of the higher education sector.' The question of what would constitute such a need to 'protect the integrity of the higher education sector' has caused uncertainty about a Minister's ability to give direction to TEQSA. To bring TEQSA in line with other statutory agencies, the Bill will allow the Minister to give a general direction to TEQSA in relation to the performance of its functions and the exercise of its powers. The Minister will still be unable to give a specific direction about, or in relation, to a particular institution or decision regarding a specific institution.

Ministerial approval for fee determinations

TEQSA is a partial cost recovery agency. The TEQSA Act currently allows TEQSA to determine, by legislative instrument, the fees that it charges higher education institutions for its services. For example, the TEQSA Determination of Fees No. 3 of 2013 provides the following fees:

- registration for universities \$85 000;
- registration for other higher education institutions \$22 000; and
- accreditation for a single course of study \$9 000.

The Bill proposes to create oversight around the fees charged by TEQSA, by requiring the agency to seek the Minister's approval before making any fee determination. This supports the whole-of-government deregulatory agenda in which the setting of fees and delivery of appropriate services are interlinked. In line with this approach, the Bill also allows the Minister to give a specific direction to TEQSA regarding the fees it charges higher education institutions and to request information from TEQSA as to how fees are determined.