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Australian Government

Tertiary Education Quality and Standards Agency

Inquiry into the Administration of Regulatory Activities: Auditor General's Report No. 33 (2019-20)

Submission from the Tertiary Education Quality and Standards Agency to the
Joint Committee of Public Accounts and Audit

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Contents

Inquiry into the Administration of Regulatory Activities: Auditor-General's Report No. 33 (2019-20)	3
Introduction	3
Response to the recommendations	3
Response to other observations in the ANAO report	4
Additional comments: TEQSA's approach to regulation	4

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Inquiry into the Administration of Regulatory Activities: Auditor-General's Report No. 33 (2019-20)

Introduction

The Tertiary Education Quality and Standards Agency (TEQSA) welcomes the opportunity to make a submission to the Joint Committee of Public Accounts and Audit Inquiry into Regulatory Activities based on the Auditor-General's Report 33 (2019-20).

The objective of the ANAO performance audit was to assess the effectiveness of TEQSA's regulation of higher education, on four criteria:

- Did TEQSA have an effective process to assign and maintain appropriate risk ratings to higher education providers?
- Did TEQSA have effective and timely approval processes, including for registering higher education providers and accrediting courses?
- Did TEQSA have effective compliance and enforcement processes?
- Did TEQSA provide appropriate support to the higher education sector to address key sector-wide risks?

The ANAO audit found TEQSA to be effective or largely effective in all but one instance, confirming that TEQSA is meeting its purpose under the TEQSA Act.

TEQSA has accepted, and is implementing, all five recommendations made by the ANAO in relation to findings regarding TEQSA's compliance and enforcement activities. TEQSA has also acknowledged, and is responding to, areas for improvement identified by the ANAO. TEQSA expects that the ANAO recommendations will be fully implemented by mid-2021.

Response to the recommendations

Recommendation 1: TEQSA establishes and implements a comprehensive compliance monitoring framework, supported by appropriate operational responses.

TEQSA has developed a Compliance Monitoring Framework that clearly sets out our approach to [Quality Assurance and Regulation](#) and [Compliance and Enforcement](#) and incorporates relevant policies, procedures and instructions (such as dealing with high and low risk category higher education providers). An Investigation Manual is being prepared and procedures for handling complaints and concerns made to TEQSA have been revised. Staff are receiving relevant training.

Recommendation 2: TEQSA ensures that it adequately documents its analysis and the outcomes of each stage of its compliance assessments in a timely manner.

A new reporting framework to capture the progress of compliance assessments and revised records naming standards have been implemented. Mapping of business requirements to improve the compliance assessment process commenced in 2020-21.

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Recommendation 3: TEQSA ensures material submitted by providers as part of formal conditions is assessed in a timely manner.

Newly-developed resources and tools to support the management of conditions have been implemented. In addition, a project to develop a new approach to better target and manage conditions and other forms of assurance is in progress.

Recommendation 4: TEQSA establishes and implements a transparent process for managing material change notifications, including documenting the assessment of all notifications.

A consistent process to handle material change notifications has been implemented. A communication plan to providers regarding the reporting requirements for material changes has also been implemented.

Recommendation 5: TEQSA ensures that its annual performance reporting includes information on the number of provider compliance activities undertaken and the outcomes of compliance activity.

Publication of an annual TEQSA compliance report is planned for early 2021. The publication will draw on internal monthly regulatory activities reports and the newly implemented reporting framework for monitoring the progress of compliance assessments. The TEQSA Annual Report 2019-20 included the number of compliance assessments initiated and finalised during the year.

Response to other observations in the ANAO report

In addition to the five recommendations, the ANAO identified specific areas for improvement in relation to TEQSA's risk assessment processes, the treatment of sector-wide risks and regulatory approvals processes. TEQSA has taken action to address all of ANAO's observations, including:

- Improving the timeliness of regulatory decisions, particularly for low risk providers, through a number of projects, including a review of the specialisation business process model, the development of risk priorities, scoping improvements and other business process improvements.
- Incorporating an analysis of relevant complaints about providers as part of the registration and accreditation assessment process.
- Including a summary of information held by TEQSA in annual Provider Risk Assessments, such as information about complaints, material changes, regulatory history, and active sanctions and the provider's response to them.
- Establishment of a Higher Education Integrity Unit to identify threats to sector integrity and take action to mitigate the likelihood and impact of threats, including development of a plan for development of guidance and good practice information for the sector.

Additional comments: TEQSA's approach to regulation

The *Review of Australian Higher Education* (the Bradley review, 2008) that gave rise to the establishment of TEQSA, found that the former quality assurance framework was too focused on inputs and processes and did not give sufficient weight to demonstrating

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outcomes and standards.¹ As a result of the Bradley review, the government established a national framework for higher education accreditation, quality assurance and regulation including an independent national regulatory agency.

The second reading speech that accompanied the TEQSA Bill 2011 stated:

TEQSA will focus its activities on encouraging and supporting both new entrants to the system and higher risk providers, while ensuring that existing, higher quality, lower risk providers will not be unnecessarily burdened.

The TEQSA Act and its subordinate legislation were therefore designed to have a focus on 'meta regulation' – that is, reviewing institutions' own regulatory systems rather than directly testing whether individual assessments or research are of an appropriate academic standard.² It was created with an expectation of a partnership between the regulator and the entities it regulates, while preserving the capacity to restrict or deny the capacity to offer higher education in appropriately limited circumstances. TEQSA's principal aim is to promote and support a culture of effective self-assurance within providers—to ensure that they meet the Standards so that the need for enforcement action is minimised.

Modern regulation requires the regulator to encourage as many regulatees to be leaders and move beyond compliance; that is to embark on a process of continuous improvement.³ Dow and Braithwaite note that without this approach, regulators can become prescriptive and oppressive and hold back developments in the public interest.⁴ Such a prescriptive approach would not facilitate achievement of one of the objects of the TEQSA Act relating to *the protection and enhancement of Australia's reputation for excellence, diversity and innovation in Australian higher education*.

The *Tertiary Education Quality and Standards Agency Act 2011* (TEQSA Act) established TEQSA as Australia's single national quality assurance and regulatory agency for higher education. While the TEQSA Act identifies a significant number of objects, the core elements are to apply a standards and risk-based quality framework to protecting and promoting the interests of higher education students and the reputation of the higher education sector. The standards are set out in the *Higher Education Standards Framework (Threshold Standards) 2015* (the HES Framework).

Providers are required to achieve and maintain compliance with the standards as part of their registration, which includes self-monitoring of their compliance and taking appropriate action if any lapses occur. See standards 6.2.1 c and k of the *Higher Education Standards Framework (Threshold Standards) 2015*.

¹ Bradley, D, Noonan, P, Nugent, H & Scales, B 2008, *Review of Australian higher education: final report [Bradley review]*, DEEWR, Canberra, p.15, https://www.mq.edu.au/_data/assets/pdf_file/0013/135310/bradley_review_of_australian_higher_education.pdf, accessed 25 Jan 2021.

² Valerie Braithwaite, *All eyes on quality: Review of the National Vocational Education and Training Regulator Act 2011 report*, (Canberra: Australian Government, 2018), p. 40, https://docs.employment.gov.au/system/files/doc/other/all_eyes_on_quality_-_review_of_the_nvetr_act_2011_report.pdf, accessed 25 Jan 2021.

³ Gunningham, N and Sinclair, D. (2002) *Leaders and Laggards: Next-generation Environmental Regulation*, Texas, Greenleaf Publishing, in Dow, K, Braithwaite, V 2013, *Review of higher education regulation: report [Lee Dow-Braithwaite review]*, Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education, Canberra, p. 17, <https://docs.education.gov.au/system/files/doc/other/finalreviewreport.pdf>, accessed 25 Jan 2021.

⁴ Dow and Braithwaite, *Review*, p. 17.

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To assist providers in maintaining compliance with registration requirements, TEQSA:

- provides guides to our processes, as well as guidance notes sharing our insights and experiences about significant issues in achieving effective self-assurance
- uses a relationship management approach to maintain communication and cooperation with providers and, where necessary, giving advice to providers about effective self-assurance practices
- consults and works with peak bodies in the sector to ensure that our approach is understood and to receive feedback from them about their members' perspectives.

This is consistent with the description of responsive regulation that is used to increase the likelihood of cooperation with the regulator.⁵

Compliance is monitored and assessed through a number of interconnected and complementary activities, including:

- the cyclical assessment for re-registration and re-accreditation
- an annual risk assessment process
- the investigation and the monitoring of complaints
- the conduct of sector-wide thematic analyses.

In assessing compliance, TEQSA applies the three basic principles of regulation stated in the TEQSA Act, which are regulatory necessity, reflective risk and proportionality.

A Review of the impact of the TEQSA Act undertaken by Deloitte in 2017 found that:

A variety of indicators show that the TEQSA Act has been successful in maintaining the quality of higher education in Australia. It is likely that this has been facilitated by the TEQSA Act excluding some low-quality providers, both through TEQSA's rejection of applications for registration and through an unknown number of providers being deterred from applying for registration due to them being unable to meet the Threshold Standards.⁶

⁵ N Gunningham and P Grabosky (1998) *Smart Regulation: Designing Environmental Policy*, Oxford University Press: Oxford, in Dow and Braithwaite, *Review*, p. 26.

⁶ Deloitte Access Economics, 2017, *Review of the impact of the TEQSA Act on the higher education sector*, p. iii, https://docs.education.gov.au/system/files/doc/other/review_of_the_impact_of_the_teqsa_act_final_report_060417.pdf, accessed 25 Jan 2021.