

## **Tertiary Education Quality and Standards Agency Amendment Bill 2014**

*Portfolio: Education*

*Introduced: House of Representatives, 27 February 2014*

### **Summary of committee concerns**

1.107 The committee seeks further information on the means by which quality standards in tertiary education will be maintained following the removal of the Tertiary Education Quality and Standards Agency's (TEQSA) quality assessment function.

### **Overview**

1.108 This bill seeks to amend the *Tertiary Education Quality and Standards Agency Act 2011* to give effect to the Government's decision to implement recommendations arising from the independent Review of Higher Education Regulation (the Review). The purpose of the bill is to increase the efficiency of TEQSA and to reduce the regulatory burden on higher education institutions. The bill includes measures to:

- remove the quality assessment function that TEQSA currently has so as to allow it to focus on its core activities of provider registration and course accreditation and the development of more efficient processes around these functions;
- enhance TEQSA's delegation powers to enable it to implement more efficient decision making processes and provide applicants with access to internal review of decisions (rather than having to commence proceedings in the Administrative Appeals Tribunal);
- improve the Minister's ability to give directions to TEQSA in relation to the performance of its functions and exercise of its powers;
- provide the Minister with greater flexibility in determining the most appropriate organisational arrangements for TEQSA by removing the requirements to appoint a specific number of Commissioners and to appoint full-time and part-time Commissioners and provide that all Commissioners will cease to hold office under the TEQSA Act at a fixed time (including appropriate transitional arrangements); and
- provide for a number of technical amendments suggested by TEQSA to improve the efficiency of notification requirements.

## **Compatibility with human rights**

### ***Statement of compatibility***

1.109 The bill is accompanied by a statement of compatibility that identifies that the bill engages the right to work and rights in work<sup>1</sup> and the right to education.<sup>2</sup> The statement concludes that the bill is compatible with human rights.

### ***Committee view on compatibility***

#### ***Right to work***

1.110 The committee considers that the statement of compatibility adequately addresses the bill's engagement with the right to work and rights in work. The statement provides sufficient justification for the proposed limitation on these rights, namely the termination of the current Commissioners, in light of the objective sought to be achieved. This includes the application of transitional arrangements, the ability for Commissioners to reapply for positions in line with the amended Act and the intention to offer suitable alternative employment or financial compensation to those who are not reappointed.

#### ***Right to education***

1.111 As set out above, the bill includes measures to re-focus TEQSA on its core functions of provider registration and course accreditation. This includes the removal of the current quality assessment function. According to the Minister's second reading speech, 'the bill will remove TEQSA's quality assessment function which allowed the agency to conduct sector-wide thematic reviews of institutions or courses of study'.<sup>3</sup>

1.112 The removal of existing mechanisms designed to uphold the quality of tertiary education might appear to constitute a limitation on the right to education. Economic, social and cultural rights, including the right to education, may be subject to such limitations 'as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society'.<sup>4</sup>

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1 Articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

2 Article 13 of the ICESCR.

3 The Hon Christopher Pyne MP, Minister for Education, *House of Representatives Hansard*, 27 February 2014, p 3.

4 Article 4 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

1.113 To the extent that the withdrawal of TEQSA from certain activities might constitute a limitation on the right to education, it is necessary for the government to demonstrate that the measure pursues a legitimate objective and has a reasonable relationship of proportionality between the means employed and the objective sought to be realised.

1.114 The statement of compatibility states that the purpose of the measures is to: provide for more efficient and targeted activity by TEQSA which will ensure that higher education institutions have more time and resources to devote to doing what they do best – delivering the highest quality teaching, learning and research. This will benefit Australian and international students as well as the broader Australian community and economy.<sup>5</sup>

1.115 The statement states that despite these changes, '[t]he highest standards of quality will continue to be upheld'.<sup>6</sup> On this basis, the statement concludes that the bill is compatible with the right to education. However, the statement of compatibility does not provide any information as to how quality standards will continue to be upheld and maintained at a high level. The committee notes its expectation that statements of compatibility provide more than assertions when justifying limitations on human rights.

1.116 The committee is aware that sections of the higher education sector have taken the view that TEQSA's involvement in quality assurance has not been appropriate in view of the established means for assuring quality that have been developed within the sector, and have questioned the necessity of TEQSA's involvement.<sup>7</sup> The committee also notes the findings of the Review that institutions themselves may be best placed, and should be largely responsible, for assuring the quality of their educational provision.<sup>8</sup> Nonetheless, the committee considers that further information on the standards and processes that will ensure that high quality education standards are maintained (for example, those standards and processes that existed pre-TEQSA or which exist alongside TEQSA) is necessary to enable it to conclude that the measure will not unjustifiably limit the right to education.

**1.117 The committee intends to write to the Minister for Education to seek further information as to how quality standards in tertiary education will continue to be maintained in the absence of TEQSA's quality assessment function.**

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5 Statement of compatibility, p 3.

6 Statement of compatibility, p 3.

7 See, for example, Professor Kwong Lee Dow AO and Professor Valerie Braithwaite, *Review of the Higher Education Regulation Report*, 2013, p 47.

8 *Review of the Higher Education Regulation Report*, p 48.

