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EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS
LEGISLATION COMMITTEE

Reference: Tertiary Education Quality and Standards Agency Bill 2011

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**SENATE EDUCATION, EMPLOYMENT AND WORKPLACE RELATIONS
LEGISLATION COMMITTEE**

Tuesday, 19 April 2011

Members: Senator Marshall (*Chair*), Senator Back (*Deputy Chair*) and Senators Bilyk, Cash, Hanson-Young and Wortley

Participating members: Senators Abetz, Adams, Barnett, Bernardi, Birmingham, Bishop, Boswell, Boyce, Brandis, Bob Brown, Carol Brown, Bushby, Cameron, Colbeck, Coonan, Cormann, Crossin, Eggleston, Faulkner, Ferguson, Fierravanti-Wells, Fielding, Fifield, Fisher, Forshaw, Furner, Heffernan, Humphries, Hurley, Hutchins, Johnston, Joyce, Kroger, Ludlam, Ian Macdonald, McEwen, McGauran, Mason, Milne, Minchin, Moore, Nash, O'Brien, Parry, Payne, Polley, Pratt, Ronaldson, Ryan, Scullion, Siewert, Stephens, Sterle, Troeth, Trood, Williams and Xenophon

Senators in attendance: Senators

Terms of reference for the inquiry:

To inquire into and report on:

Tertiary Education Quality and Standards Agency Bill 2011

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BEATON-WELLS, Mr Michael, Executive Director, Finance and Planning Group, Universities Australia

COALDRAKE, Professor Peter, Chair, Universities Australia

CRAVEN, Professor Greg, Committee Member, Universities Australia

Committee met at 8.56 am

CHAIR (Senator Marshall)—I declare open this public hearing of the inquiry into the Tertiary Education Quality and Standards Agency Bill 2011 and Tertiary Education Quality and Standards Agency (Consequential Amendments and Transitional Provisions) Bill 2011 referred to the Senate Education, Employment and Workplace Relations Legislation Committee on 24 March 2011 for inquiry and report. Together the Tertiary Education Quality and Standards Agency Bill 2011 and the Tertiary Education Quality and Standards Agency (Consequential Amendments and Transitional Provisions) Bill 2011 provide for the establishment of the Tertiary Education Quality and Standards Agency, a new national and independent regulator for the higher education sector.

Before the committee starts taking evidence I advise that all witnesses appearing before the committee are protected by parliamentary privilege with respect to their evidence. This gives them special rights and immunities because people must be able to give evidence to committees without prejudice to themselves. Any act which disadvantages a witness as a result of evidence given before the Senate or any of its committees is treated as a breach of privilege. Witnesses may request that part or all of their evidence is heard in private however I also remind witnesses that giving false or misleading evidence to the committee may constitute a contempt of the Senate. Before we begin I ask participants to switch their mobile phones to off or to silent.

I now welcome representatives of Universities Australia and thank them for joining us today. We have received your submission and I invite you to make some opening remarks to the committee to be followed by some questions.

Prof. Coaldrake—Thank you very much. Universities Australia supports TEQSA. It supports the idea of a single, national regulator and, as we have said in other places publicly, a single, national regulator with teeth. We think the initiative is important in terms of advancing and protecting the quality of Australian higher education and protecting the interests of students who study in Australian universities. We do have some particular issues to raise. I guess the most important threshold issue relates to the self-accrediting status of universities and I think that is also a matter that has been widely dealt with in the public arena. There are several other clauses that we might like to make some comments on as well but I suspect that we will start with the self-accrediting issue.

Prof. Craven—In terms of self-accreditation it is a question of whether you wish to pose questions or whether you would like to hear a few points on it at the outset. We would be happy to do either.

CHAIR—We have got your written submission of course but if you want to elaborate on the argument you should. Generally the way I like to conduct the hearings is that you finish your presentation and then we ask questions across the board. I can control the time better that way.

Prof. Craven—I might then simply elaborate on Professor Coaldrake's remarks on self-accreditation. Self-accreditation is a fundamental attribute of universities; it is not merely the fact that they accredit their own courses but that they are, by definition, self-accrediting institutions. Universities are constitutional institutions: they are free in their research; they are free in the choice of their students and the constitution of those students and staff as a community; and they are free in the courses that they offer. It is fundamental not only to their independence but to innovation that universities see the directions and the opportunities and they take them. This is a first order principle of universities. It is the fundamental principle of legislative drafting that first order principles are in the primary legislation not in the secondary legislation. We have had many discussions with the department on this because at the moment, self-accreditation appears only in the subordinate legislation attached to this legislation, in the protocols. It is the view, very firmly, of Universities Australia, and I think an absolute view of the entire community of Universities Australia, that self-accreditation should indeed be recognised in the legislation.

We have a clear view on what form that recognition should take. It should appear at the end of part 5, which is the accreditation part of the legislation. It should be a new section 58 and it should have four elements. First of all it should recognise that universities are self-accrediting institutions who accredit their own courses; in other words, both the definitional character is institutions and the operative fact that flows from that that they do self-accredit their courses. Secondly it should be recognised that this is subject to the right of TEQSA to

take any action under the legislation which it is entitled to make. There is no desire to get out of the scope of TEQSA with this recognition; that is part of it. Thirdly, that this self-accrediting recognition should apply only to those universities which are what we might call full Australian universities; in other words, the universities that we presently have now, 39, and a sparrow on the floor. These should be the universities that take the scope of that. It should not apply, for example, to foreign universities, university colleges or universities of specialisation because these are different. Also, the scheme of the act makes it very, very hard to pick up those types of universities in this type of provision. Finally there should be a provision in this new section 58 which says that this self-accreditation provision operates notwithstanding anything else in the act to make sure that it is fully embedded. But of course it is only fully embedded according to its terms, so you are still subject to the requirements of TEQSA. That would be the form we would see as recognising the philosophical principle.

CHAIR—Thank you. Do you have some other points or is that where you wanted to end it?

Prof. Coaldrake—We will leave it there.

CHAIR—We can cover some of those things.

Senator MASON—My question is probably for Professor Craven; given you are a renowned federalist, I thought I would put this to you. The Western Australian minister, Dr Constable, has put a submission in which she says in the introduction:

In a Federal system there are advantages in a balance of competition and collaboration between States and Territories in developing good policy and promoting operational effectiveness ... Operational matters such as the delivery of regulatory services are best undertaken where the institutions operate and the students reside. A Commonwealth takeover of State and Territory roles and responsibilities is unlikely to promote effective and efficient regulation in higher education in Australia.

Professor, what do you say to that?

Prof. Craven—As you say, I have always been a strong federalist, often to my cost. My general view of Australian organisation is that I am very much in favour of both competitive and cooperative and pure federalism and that will always be my view. There are of course areas which are inappropriate for that or where for whatever reason it has not worked, a classic example of where it is not appropriate is the defence forces. No one wants a Western Australian or a Victorian Army or Navy. There are other areas where maybe it could have worked but it just has not.

The sad reality is that federalism in relation to universities and state control of universities has not worked. I know that for a fact because I have spent quite a lot of my time trying to persuade premiers and education ministers that it should work, that they should invest in universities, that this was a great opportunity for their states. That has never succeeded. The reality is that the states, by and large, have left universities to the Commonwealth now for decades. It is only a question of for how many decades that has happened that you might want to argue about. Probably the most obvious statistic that is always tossed around is that in a majority of states the states take more money out in payroll tax from universities than they actually put in. Therefore, it is like Monty Python, it is a dead parrot. There is simply no point flogging a dead parrot.

Prof. Coaldrake—Can I please add to that? Australia is a country of 23 million people. If you look at our country from outside and you look at the world in which we seek to operate and be competitive, it is absurd to have six, seven, eight or nine regulators or quasi-regulators. We need a single national voice. We wish to position ourselves nationally as a high quality player, particularly in the Asia-Pacific and more broadly. It also has to be said, as Greg has said, that the state-based system has worked, let us say unevenly.

Senator MASON—I think you have used the word or the slogan 'Brand Australia', that it is better protected with a national regulator?

Prof. Coaldrake—It is about the quality of our endeavour and it is about protecting our students who come from everywhere and go everywhere as graduates.

Senator MASON—To be fair, I think the government has received due credit for its consultation throughout the development of this legislation, certainly from the higher education providers, not so much the state governments, but let us leave that for the moment as it certainly has from the higher education providers. What has changed between November of last year when negotiations were continuing and today? What areas of the legislation have changed which made you much happier with the draft bill?

Prof. Craven—I think you are quite right: the government has been extremely consultative in the development of this legislation. It has been very ready to take on board the concerns of the sector. I think it is one of those classic pieces of legislative history with which all of the senators here would be familiar. You start

off with an idea, it goes up into a first draft and then if there is a proper consultative process, all of the problems come out in the draft and you work together to solve them. I think that is fundamentally what has happened; there has been a process of mutual refinement. If you were to characterise the process, remembering this is a regulatory bill, you would probably say that this went from a piece of regulatory legislation to a piece of regulatory legislation that was gradually refined and improved with a series of safeguards and principles being put in it. In other words, the idea was there for one higher education sector in Australia, regulated for quality, and the consultation process has put in a significant number of safeguards, of protections, and in a sense a regulatory philosophy through the bill. That has probably been its biggest change in character terms.

Senator MASON—Thank you.

Prof. Coaldrake—The original draft was a garden variety-type draft bill. Our real issue was that it was not fit for our particular purpose or our particular context. We needed legislation that was applicable to higher education and the nature of the higher education sector, not something that we rolled out for any sector of the economy. That in character led to the sort of changes in detail and emphasis, which were many that Greg has outlined.

Senator MASON—Busy over the Christmas holidays, is that right, Professor?

Prof. Craven—Constructively engaged, Senator. The most obvious change was part 2 which was very much developed. You will see those regulatory principles which give a philosophical backbone to the act, which, while allowing full regulation, also allows full balance of power and protection for higher education institutions.

Senator MASON—Professor Coaldrake, in UA's submission you say in the fourth last paragraph, and there is a criticism here of the government:

Finally, Universities Australia wishes to express disappointment that the development of a TEQSA Bill has not travelled in parallel with the development of a five-part standards framework which will underpin much of TEQSA's activity.

I think it is fair to say that the Council of Private Higher Education, who also are generally supportive of the bill, put it more bluntly:

From the perspective of the higher education provider, the standards are actually more significant to their operations (and more central to the effective operation of TEQSA), than the legislation that establishes the regulator.

In other words, the standards are really more important than the bill itself in terms of how it operates with respect to higher education providers. We have got the draft before us but the draft does not close for comment until June I think. We have drafts from the previous iterations but we do not have any final standards. Are you happy to give UA's blessing prior to those standards being finalised and being in regulatory form?

Prof. Coaldrake—Thank you for the question. I guess I would say that we are in a better position to have the legislation ahead of the standards than vice versa. This has of course been a very complex exercise. It has involved the development of a level of trust in which all sides in the discussion have been listening and responding to the arguments on their merits as we have proceeded. In an ideal world you might have actually had those things in very tight lock-step, but good progress has been made on the standards, particularly the provider standards, and I might ask Michael and Greg if they want to say anything about that. We are relaxed, but it is complex. We are relaxed because the engagement with government in the development of the arrangements has been detailed and continuous.

Mr Beaton-Wells—I think that puts it fairly. These things are not going to be able to be fully determined at a single point in time; it is going to take time to develop in both practice and in all of the detail being proposed. I think we have taken the pragmatic view that it was probably a bit idealistic to think that it would all be in place on day one or day minus one.

To get this right is going to require a continuing high level of engagement with the sector broadly across all parts of the sector. We would acknowledge there are significant aspects, particularly within the outline of the standards framework, that are not developed at this stage. We think the key aspect of what has been proposed as threshold standards are reasonably developed, perhaps with the exception of the definition of research. That aside, I think we are comfortable that the level of engagement and response we have had indicates that if that proceeds, together with the framework in the act, we think we have got a reasonable basis to proceed.

Senator MASON—I am sure that Senator Back would agree with me, but in relation to the opposition, we support the bill in principle. We have said that on the record. Our concern really is the standards that are critical to its effective implementation. Because they are not ready, it is difficult for us to give wholehearted

support and it is difficult to know where the issues will emerge. But, if UA is satisfied and can trust the government with respect to the development of those regulations, well that does assist.

Prof. Craven—Senator, there are two safeguards internally in the bill with respect to the standards. The first is that because the three fundamental principles are in part 2 and in the objectives of the act, the standards must be consistent with those principles. The other of course is that the standards are disallowable instruments, which of course would mean that if there was something odd about them, which we do not believe there will be, then there would be other legislative opportunities for correction.

Senator MASON—Mr Chairman, I have a series of more detailed questions but I have had a very good run. Can I ask just one more question on the detail?

CHAIR—Yes.

Senator MASON—Thank you. I have several questions relating to the bill itself. One issue that was raised in particular in the Victorian government's submission is about dual-sector institutions. Of course you know, gentlemen, there are several of those here in Victoria. The criticism from the Victorian government was that the legislation had not been adequately crafted to take account of dual-sector universities. I know the government has said that in the future it will merge the VET and TEQSA. There is no deadline for that but it will happen sometime. In the meantime, are you convinced that the bill does take sufficient account of these multi or dual-sector institutions?

Mr Beaton-Wells—I might respond to that. Our view is that it responds to the extent it is able. It makes some provision for transfer of decision making consideration between the two bodies if there is going to be a national VET regulator and a national higher education regulator. To the extent that higher education is operative, it is certainly dealing with that field. There are complex arrangements between the two sectors and certainly one of our issues that we wish to raise today goes to that issue of the arrangements that exist within the sector. I refer to section 26 which is a requirement that a higher education provider ensure that third party organisations that are involved in co-delivery of a course meet the higher education standards framework or act consistent with that. So certainly from our point of view, we think that section 26 needs to be clarified so that the myriad of arrangements that are important in terms of articulation within Australia's tertiary education system, inclusive of VET and higher education, as well as Australia's arrangements with the world, particularly exchange arrangements and co-badged arrangements, are not caught by that provision. It is vital for innovation and it is vital for efficiency between these sectors that we are not seeking to impose, if you like, higher education standards in Australia on other sectors or on other parts of the world which are not being regulated here in Australia. That goes to the VET question. So long as we have a clarification of the extent of these provisions and that they do not catch the VET sector, we think that the provisions deal sufficiently.

It is clear that if I take a Victorian university like RMIT which is a dual-sector provider, if we are left with a state VET regulator and a national VET regulator, it will need to deal with both, together with TEQSA on the higher education front, we would expect that there is a sensible referral within those parties of overlapping regulation. That is an expectation we have. We have no guarantee that of course the VET side of that will be sorted out any time soon.

Senator MASON—Mr Beaton-Wells, you are right. As far as the coalition is concerned, we do not want to make the situation worse and more complex for universities—it is difficult enough as it is. Over the next medium term, the government says that both the VET and the higher education regulators will be combined. In the meantime we do not want to make the situation worse so that there are clashes between the two. If you are convinced, or at least satisfied that the legislation caters for it, then it is a good start.

Prof. Craven—Two things: firstly, it hardly could be worse in terms of overlap and duplication, so it certainly will not be worse. We should not lose the section 26 point though which is a very, very specific problem. This is this idea that whenever you combine something with a higher education course in Australia then the higher education provider, let us say a university, has to assure that that other thing meets exactly Australian standards. An obvious situation is if the University of Melbourne sends people to Harvard University for a year on an exchange, you do not want to have the University of Melbourne trying to persuade Harvard to comply with Australian TEQSA legislation.

A second situation is, for example, the sort of arrangements that universities are increasingly making with TAFEs where they work out that some part of a TAFE degree or a TAFE course can be some part of a university degree because the two meld together. We want this for efficiency and productivity; we do not want this to stop it.

Senator MASON—I agree.

Prof. Craven—So it is very important that the section 26 point is addressed.

CHAIR—If we can just come back to the self-accrediting clarification that you are seeking. I just want to be very clear because I think I am somewhat sympathetic to what you are saying. You have indicated that TEQSA needs to have teeth. So you are not seeking to actually extract universities out of the regulatory process but simply reinforce a statement of principle; is that more of what you are saying?

Prof. Craven—It is a statement of principle and fundamental principle, you are absolutely right, but there is no desire to extract universities from TEQSA. As I say, the way that we would see it would be if you saw those four points of subsections. The first subsection would be the fundamental statement of principle and the second subsection would be that you are still absolutely subject to all the powers of TEQSA. What it means is that universities are this type of institution, and that is very important, but TEQSA remains with all its powers that it would otherwise have.

CHAIR—I am trying to think of the name of the university but I recall our good colleague, Senator Carr, railing for many years about a particular university that was establishing self-accrediting courses on alchemy and other very innovative, I say sarcastically, courses that I think probably in hindsight ought not to have been allowed. Why would a university be able to self-accredit under those sorts of circumstances?

Prof. Craven—The answer would be that under the provision we are proposing a university could indeed self-accredit that course on the Monday. On Tuesday TEQSA would be through the door asking where the alchemy department was and asking why was it in a university and what was it doing? You would expect the regulatory processes to follow pretty swiftly. We have no desire to exempt universities from TEQSA.

Prof. Coaldrake—I do not think it goes to the sort of basket-weaving concerns that Minister Nelson used to talk about as well as whatever Senator Carr used to talk about. It is the ability of universities to develop courses in new space, like nano-technology and like creative industries. When these were first mentioned people quite often attached to them subsequently job labels that have not previously existed. These fields emerge from the way in which knowledge expands over time. Universities wish to be able to engage in that experimentation and to advance their knowledge, assuming of course that the teaching activities are underpinned by a research base. I think it is the new fields argument that is the most powerful argument not the easy hits.

CHAIR—No, and you are certainly not relying on TEQSA to do any of that development, simply to come in afterwards and have a look at it.

Prof. Coaldrake—In time afterwards professional bodies and TEQSA will come and acknowledge and accredit or whatever it happens to be.

Mr Beaton-Wells—I refer to Monash University's submission to the inquiry in which they make the point around TEQSA having the power to place conditions and restrictions on accreditation in the event that courses are not delivered of adequate quality to an acceptable level or there has been some abuse of the power to self-accredit. I think we are talking about a presumption in the first instance that can be overridden in reasonable circumstances where standards are not being met.

Perhaps our submission is understood in two parts: the innovation part and the fundamental limitation that exists under the proposal for TEQSA to impose conditions. Our concern was that the presumption was not the other way around to begin with.

CHAIR—In terms of support for the bill, I think you have made our position fairly clear. If the option is a bill precisely as it is now, would you still be supportive of the bill passing, if that was the option?

Prof. Coaldrake—Our membership would have a very significant level of disquiet if the self-accrediting principle were not embraced within the main body of the bill. We have pressed this and we acknowledge that the government has been listening to the concerns we have raised. I do not want in a hearing like this to be talking about things in terms of being conditional, but I think our membership feels that this is a fundamental threshold issue, the securing of which would ensure that we are comfortable with the bill. I think if it is not there people will have a level of disquiet which is unhelpful and unnecessary.

Senator BACK—Gentlemen, it has been put to us I think by Professor Williams of the University of New South Wales that the TEQSA may not apply to some Australian universities not deemed as constitutional corporations. Could you comment on his concerns?

Prof. Coaldrake—I think Professor Craven might be the person to take that.

Senator BACK—I was wondering whether Professor Craven might be interested to respond.

Prof. Craven—You can always argue about the extent of Commonwealth power. The corporations power is one of the most controversial of the Commonwealth's powers and has been used extensively by both of the major parties in this country to advance their agenda. I have seen the comments of Professor Williams. Universities are interesting entities in relations to the corporations power because they are all corporations but if you are talking about trading corporations, they are in a sense at the outer edge; they are corporations whose purpose would not be said to be primarily trading but all of them have trading activities. If you set university exams on the corporations power you often put a university in it, and I have done it myself for 25 years.

The simple reality is that whether or not I agree with the High Court's interpretation of the corporations power and whether or not Sir Samuel Griffith agrees with the interpretation of the corporations power, it really does not matter. There is a line of cases in the High Court going back at least to the dam case in 1982 which I believe adequately demonstrate the fact that although you can have good arguments about it, and I have had them myself, a trading corporation is a corporation which has trading activities and therefore Australian universities are trading corporations. I have great respect for Professor Williams; he is one of my co-chief investigators on an ARC project on federalism. But, the plain fact is I would not like to be appearing before the High Court and arguing that universities were not trading corporations. I had that conversation with a very senior law officer of a state the other day and he expressed exactly the same view. I do not see it as a constitutional impediment.

Senator BACK—So it is not a concern you express. Moving to one of the concerns that you did raise in your submission:

... that the Bill does not adequately delineate the States' powers to establish universities through legislation and TEQSA's power to register them, or define the process to be followed should there be conflict between them.

It was in relation to a state wanting to establish a university. Could you explain to us how you think the legislation and/or the instruments could actually be improved to more clearly delineate that concern and how it might be addressed?

Prof. Craven—I am looking doubtful so I will hand over to one of my colleagues. I think that the first thing to do is to try and understand how the bill actually does it at present because it does it almost indirectly. I might ask Mr Beaton-Wells to answer.

Mr Beaton-Wells—I think conceptually the bill is trying to indicate that state powers to establish universities remain intact, that insofar as their activities of conducting higher education business are concerned, that business is covered exclusively by TEQSA and the transitional legislation. To the extent that there are more generic activities conducted by universities, either non-higher education activities or ancillary activities necessary to operate an organisation in the modern world—taxation, financial regulation et cetera—the bill is trying to indicate that those matters could be dealt with by other state or federal acts.

From that point of view it is carving out a niche in-between the act of establishment and act of generic operation of other regimes under which the Commonwealth statute would apply exclusively. That is I think a necessary design in this case. In other words, it would be I think more problematic to try to take over the power of establishment and it would be nonsensical to try to take over powers beyond the specialised activities of higher education providers. To that extent, I think it is faced with a complex problem and, as far as we are concerned, dealing with that problem is about as straightforward as it can be in the circumstances.

Senator BACK—As an extension, could you advise whether you believe the legislation, as drafted, adequately covers the likelihood or the provision or the activities, should heaven forbid it ever happen, that two universities like UWA and Murdoch might actually decide to merge? Is there anything in the legislation that either aids or impedes that process?

Prof. Craven—I do not think the legislation impedes it in any way. That would be a complex process that would involve the amendment of state legislation and which would then involve the interaction of that with the TEQSA legislation. Really what we have here is simply one of a thousand cases of where the Commonwealth decides to legislate in an area and it relies upon the power given to it by section 109 of the Constitution for inconsistent legislation to prevail. Generically what the Commonwealth usually does is make its legislation, it lets it work. It saves particular things, as Mr Beaton-Wells said, classically the establishment of universities, but it does not try and pick out the 700 things that are the elements of the legislation; it simply allows the Constitution to work. This is really no different to any other legislation such as the corporations legislation or anything else.

Senator BACK—So you do not think in relation to the states and Commonwealth relations that such a process or a decision will be affected by the introduction of the legislation?

Prof. Craven—.

Mr Beaton-Wells—There is one clause within the registration provisions of the TEQSA bill which seeks to automatically revoke the registration of a higher education provider in the case of a winding up order. So, a state merger of universities would need to be handled in a way that is consistent with avoiding an automatic loss of registration under the scheme. There may need to be some articulation in such an example of a merger.

Prof. Craven—The practical answer would be if Murdoch and UWA were going to merge: step one would be the parliament of Western Australia would repeal both the University of Western Australia and Murdoch University acts; step two they would pass the new act, the university of something act; then there would be an application to TEQSA for registration and Commonwealth funding which would automatically flow through because the minister for education in the right of Western Australia would already have done it to the minister of education in the right of Commonwealth and the process would flow, which is really exactly the same process that would happen now.

Senator BACK—I am aware of time. Under investigative powers and sanctions I notice the bill creates offences and civil penalties, and you may have already covered it in a previous answer to Senator Mason. One of them is providing unaccredited courses. Is that likely to limit, for example, a process in which a university may be responding to a demand prior to in fact an accredited course coming into existence? Is that likely to limit an institution's freedom to test the water?

Prof. Craven—In the consultative process we went through these things in extraordinary detail trying to work out which bits were appropriate, which bits were a little bit heavy handed and indeed which bits we thought were a little light handed. I think it is an interesting one because I am sure nobody in this room realises it but universities do occasionally make mistakes.

Senator BACK—Unlikely.

Prof Craven—Not our universities of course.

Senator BACK—You must be speaking of overseas examples.

Prof. Craven—Clearly. So you could of course get into some difficulties in terms of registration of courses and really sequencing times getting out of hand. The object of those principles that are embedded in the legislation is to really make sure that TEQSA does not get carried away with this sort of thing. If you look at those things of proportionality or of, if you like, the balance between the risk of the light touch regulation that is embedded, what that means is that if the academic board accredits the physiotherapy course a day out of sequence, the reality is that TEQSA is not going to rush into a university, arrest the council and the vice chancellor and all the rest of those things. What you will get is a polite letter saying, there seems to be some contemporaneity problem with what you are doing, can we have a chat about it. On the other hand if you had a university that simply never accredited a course and ran an unaccredited medical degree for three months then I think you would be going into the university in a pretty determined way.

Senator BACK—I am aware of time, I know Senator Mason wants some questions. Finally, everything we have discussed relates to providers to governments. Can you tell if at all where the legislation actually assists the end users being the students and the graduates of our university sector; where do they benefit? If it is going to take too long to answer it then I would be happy to have it taken on notice so that I do not take time away from Senator Mason.

Prof. Craven—I think the answer is quality. What this does is it assures quality and it assures Brand Australia. It means that Australian students get a quality assured education and the whole world knows that it is quality assured and that is a great benefit.

Senator MASON—Going back to disallowance if that is okay, Professor Craven. I just want to get this right. There are two real reasons universities want to be able to self-accredit and for that to be placed in the legislation rather than in the regulations. First of all it is because it provides universities with greater legal protection so that a minister in a fit of pique does not take away the power of universities to self-accredit; is that right?

Prof. Craven—Yes, that is partly it.

Senator MASON—Subject to disallowance by a house of parliament. The second aspect is one of symbolism, which is not unimportant, but also symbolism; is that right?

Prof. Craven—Yes, there is an element of symbolism in it. Here you are actually getting at the fundamental nature of universities and why this is important. What we would be saying to you is that universities really are constitutional entities. Universities always have in our society been the repositories of free, independent thought, no matter how irritating they may be. Therefore they balance governments and even senates and media barons and very, very big corporations. One of the things that is absolutely fundamental to that is the right of those universities, as repositories of free and independent thought and highly innovative thought to be able to say, ‘We believe this is a good cause.’ That goes to their nature. If that is right, and it is right in the Western world; if that is right, then it must be prominently in the legislation.

Senator MASON—If it is ever to be taken away it should be by parliament duly constituted and not by a minister?

Prof. Craven—Indeed.

Senator MASON—I have a couple more specific questions. The University of Sydney in their submission is concerned about the effect of TEQSA on the independence of their university senate. Has UA received any assurance of how university governing bodies will be affected by the legislation? Mr Beaton-Wells, this might be one for you.

Mr Beaton-Wells—I think we have turned our mind to it. I would not put it as high as ‘assurances’. We are of the view that the proposed scheme provides, as far as we have sought to negotiate, a series of checks and balances to the imposition of a national regulatory scheme. The academic activity of a university we think is reasonably provided for on an independent basis within that context. Clearly the area where perhaps it is most acute is the creation of a structured series of awards referred to in the bill as the AQF, but there is provision for non-AQF awards as well or awards of equivalence.

That as an example indicates there is flexibility within the scheme for the senate of a university like the University of Sydney to create its own awards, declare them as awards as it is self-accredited and proceed on that basis. The point about self-accreditation and the other checks and balances that we have sought to introduce we think leave the presumption of independence there in respect of academic matters. To the extent that standards have been not met or transgressed, then a national regulator can take action. Again, the action taken, as Greg referred to earlier, was, in our view, importantly to be escalated starting with an inquiry or a please explain letter rather than stepping straight to a prohibition.

Senator MASON—So you are not concerned that the bill will take away a university’s governing council’s capacity to play with the naming of degrees and so forth? It will not make it any more difficult than it currently is?

Prof. Craven—No. In terms of that position I think it is good to introduce a note of reality into the discussion which is that the Senate of the University of Sydney is merely a creature of the statute of the New South Wales parliament which could require every member of the University Senate to come from Victoria tomorrow if it wanted. We should not get too carried away with the fact we have got another act of parliament dealing with the university governance.

Prof. Coaldrake—The other reality that we live with is basically the nature of the agreement each institution has with the Commonwealth in respect of funding, which are currently called compacts. Those guide essentially your activities and the shape of the envelope within which you are operating; that is reality. It is a political and economic reality in addition to the legal reality.

Senator MASON—Senator Back touched on this because some of the submissions given to this inquiry relate to the investigative powers and the right to publish information. NTU and others are concerned about those powers. Does UA have a view on that, about TEQSA’s powers in relation to investigation and the right to publish information onto a national register?

Mr Beaton-Wells—I might take those in two parts. The investigative powers we think are fairly consistent with other regulatory schemes including schemes which touch on our sector already.

Senator MASON—ESOS.

Mr Beaton-Wells—ESOS, for example, the Education Services for Overseas Students Act dealing with overseas students. In our discussions with the government we did water down to some extent initial proposals in that regard. In the end we think the investigatory powers, whilst potentially heavy handed, given the objects of the scheme are probably not out of proportion to the risks.

The aspect of publishing information I think we would have some concern as to, at its limit, TEQSA's capacity to publish information which is commercially sensitive. Clearly TEQSA would be unable to publish information that would breach privacy and other public protected interests. I think higher education providers would have some concern if there was a broad ambit drawn to put onto the Going to Uni website, for example—

Senator MASON—The My University website, that is right, Mr Beaton-Wells, which has been mooted has it not?

Mr Beaton-Wells—a wide range of commercially sensitive information. We would expect again that the principles would need to be drawn on there to determine the right balance as well as the basic requirement in the proposed information sections of this bill which require the public officer to ensure that their conduct meets the object of the act. In that sense we do not read the provision as providing a complete open slather to publishing information; there will need to be a judgement used. Some of our members are quite concerned about that. We do not have any specific proposals for you today about how that might be tightened up but that is perhaps a secondary aspect.

Senator MASON—The analogy is the My School website, Mr Beaton-Wells, is it not?

Mr Beaton-Wells—That is right.

Senator MASON—That is the analogy, and I know Senators Marshall and Back have both been involved in inquiries relating to that. I am not saying there is any easy answer but it is an issue that will over the next few years raise its head, particularly the development of the website—the My Uni website.

Mr Beaton-Wells—Yes.

Senator MASON—This might be a question relating to separation of powers, it sounds like one of your things, Professor Craven? We have the standards panel and we also have TEQSA. Obviously the standards panel makes the standards and TEQSA enforces it so there is that separation of powers as it were. There is concern expressed by the Victorian government and the South Australian government about the symbolism of the standards panel that sets the standards sharing resources with TEQSA. That is the concern expressed. Are you concerned about this at all?

Prof. Craven—I think that would be the 12-pound weakling of separation of powers arguments I have ever heard.

Senator MASON—So you just think it is a non-issue?

Prof. Craven—I think that is a good provision that separates the two functions from each other and to strain at the gnat that they share resources is getting a little carried away.

Senator MASON—How about threshold standards; are you happy with the threshold standards in relation to the university college and Australian university specialisation and overseas universities?

Prof. Craven—Those standards of course broadly reflect their draft standards. They broadly reflect the national protocols as they exist.

Senator MASON—Is there any change? I could not see any but I am assuming there is.

Prof. Craven—I do not think there is at the moment although there may well be refinement as it goes on. I would imagine that if that occurs then Universities Australia would assess the standards as they came through and would develop positions if there were any changes to those. It is a little difficult because we do not really have large numbers or indeed in some cases any numbers of those types of institutions at present.

Senator MASON—Because later the committee will hear from the private higher education providers and one of their big issues is how the thresholds work and their content. Is UA happy with the status quo? I was just wondering if there was any change as I could not see any. I am not sure whether the government is going to change the threshold standard.

Mr Beaton-Wells—Perhaps the construct that is worth noting and which is developing the status quo is the one of self-accreditation in respect of those other categories and the threshold for applying for entry to categories. The introduction, for example, in the latest draft threshold standards recently issued which speaks of an 85 per cent accreditation of courses over the previous five years as being, if you like, a threshold that an organisation would need to meet to apply for and maintain university status, would be a development on the status quo. At the moment those categories, whilst they exist within the MCEETYA or the MCTEE national protocols, are really left to be determined in the circumstances rather than guided by specific standards. I think

in that sense, if you like, the gateway has been given more specificity. Whether that is in fact a different standard than might have been applied otherwise we really cannot say.

Senator MASON—Thank you for that because that is something I did not appreciate that.

Prof. Craven—There is one issue which is just going to be something that will have to be dealt with and that is as you introduce narrower categories of universities, if there is a university college or a university specialisation, how do we deal with the question of something that comes on with an expertise in one area like veterinary science?

Senator BACK—Or divinity?

Prof. Craven—Or divinity and then wants to go into another area.

Senator BACK—Which is very similar as a matter of fact.

Prof. Craven—Indeed, like astrophysics, which is even more similar. There are going to be those types of issues. That is going to have to be dealt with by TEQSA but there could be questions about whether there is a need to try to deal with them at a sub-legislative level in the guidelines themselves.

Prof. Coaldrake—They will also be dealt with in the compacts because they will not be funded for those new activities; they will have to go through the compacts process in addition to the TEQSA process.

Senator MASON—There is a phrase in the legislation on which there has been a bit of commentary among the submissions. The phrase is ‘have regard to’. I am sure you know more about it, Mr Beaton-Wells. A number of submissions particularly from AUQA, the Australian Universities Quality Agency, as well as the NUS, believe that TEQSA only having to ‘have regard to the threshold standards rather than ensuring they are met will result in a declining standard.’ There is concern about that leading to a diminution of quality. What do you say to that—it is sort of a legal question?

Mr Beaton-Wells—I am not a specialist in interpreting that particular phrase, I might ask my colleague Greg.

Prof. Craven—I do not think that is a problem at all. Have regard to is the classic legal phrase which makes something a relevant consideration and that is what statutory authorities do. As you know, they have regard to relevant considerations. If they fail to have regard to that consideration or if they act so unreasonably that no reasonable authority could act in that way then their decision is invalid and subject to judicial review. Of course they have regard to it rather than something tougher because you have got a whole lot of competing requirements that have to be melded together. I do not think that is a problem.

Senator MASON—If it was more prescriptive in effect that would make it more difficult would it?

Prof. Craven—There is more prescriptive language in some parts of the act. For example, where you have got those general considerations, the three considerations, the language used is ‘must comply’. I do not think there is any problem in saying have regard to where you have got a whole range of, if you like, subsidiary considerations and there are dozens of standards. The other thing I would point out, and just because we have not mentioned it before, is this act is eminently reviewable. It in fact incorporates three levels of review: internal review, AAT review and full judiciary review. There are an awful lot of trip wires for TEQSA if they go wrong, which funnily enough did not apply to AUQA. I think realistically this is an improvement.

Senator BACK—A better outcome.

Senator MASON—In terms of appointments to the standards panel, who may be a member is expressed in the legislation. Was UA consulted as to who should be members of the standards panel? Why I raise it is that again the states have written to the inquiry and said that the interests of the states have not necessarily been sufficiently considered. Indeed I think the students as well as the NTEU say something similar. They might have different concerns, not about the states, but they have their own concerns. Does UA have a view on that?

Prof. Coaldrake—The consultations should occur. I think the answer is at this point, not yet, is it not?

Mr Beaton-Wells—To clarify, there is no standards panel at the moment.

Senator MASON—I mean in terms of make-up of the panel.

Mr Beaton-Wells—We would be of the view, for example, that there should be perhaps a specification in the act that higher education experience be included in the particular make-up of the panel, but that is an example of parts of the sector seeking a more tailored approach. We do not disagree with the basic model of having a well constituted, and in the case, I believe it is at least a dozen members or 12 to 15 members I think

from recollection. In that context, so long as we have got a balance of expertise we should see a workable expert panel brought together.

Senator MASON—Mr Beaton-Wells, you are right but as Senator Back just mentioned to me the staff want to be included, I think the students want to be included and the states will want to be included. Does UA have a view on that?

Prof. Craven—We had a discussion funnily enough at breakfast about this. It is really no different to any other legislative panel that you are going to have. You do not want to say one fox terrier, one seagull, one traffic light.

Senator BACK—Or a sparrow?

Prof. Craven—You have to rely on Her Majesty's government to have enough common sense to put people on the panel who are going to be useful. You might put some general guides, as Michael says. You might say, including people experienced in higher education but you would not want to get carried away I think.

Senator MASON—I think another one of the issues was experience in the sector itself and the administration. There are all sorts of people who make all sorts of claims for inclusion.

Senator BACK—Do you think the same applies to the actual commissioners? It is interesting that there is a chief commissioner, two full-time commissioners and two part-time commissioners. Why was that so prescriptive in relation to the commissioners but not so much with the panel? Is it a governance issue?

Prof. Coaldrake—There is a narrative here.

Prof. Craven—It is an evolution where I think TEQSA in its earlier phases was looking more like perhaps a one-person commissioner and then gradually into a slightly bigger thing but with quite low quorums. I think it was a tribute to the government and the department in discussions that it was recognised that TEQSA would be exercising such strong powers that in fact it needed to be a bigger body and it needed to have higher quorums for the exercise of its more coercive powers. That is why you get a five-person body—a head, two people always there and two people who can be brought in. In fact that is a strength of the act.

CHAIR—Thank you for your submission and your presentation to the committee, which I think has been very helpful to the committee. Thank you.

Prof Coaldrake—Thank you very much for your time.

[9.57 am]

BUCKINGHAM, Mr David, Principal Adviser, Office of the Vice-Chancellor, Monash University

WANTRUP, Ms Julianne, University Solicitor, Monash University

CHAIR—I welcome our next witnesses from Monash University. We have received your submission. I invite you to make some opening remarks to the committee to be followed by questions.

Mr Buckingham—Thank you very much. Firstly I would simply like to indicate that the presentation you have just received from Universities Australia is one that we would endorse both in general and in the detail of their responses provided, and we will not cover the same ground. I will rather go to points of detail that Monash has picked up in terms of the legislation.

We have been satisfied that the consultation process involved in developing this legislation has been a productive process. In principle, the establishment of TEQSA is something that Monash does support. The points that we want to make are, as I say, points of detail around which clarification would we think enhance the quality of the legislation.

During the consultation process the basic principles of regulatory necessity, risk and proportionality were introduced into the draft. We see this as being a critically important element of the legislation as it is now proposed. In this regard we think it would help if those principles were not only embodied in part 2 but were also, given their centrality, added to the simplified outline of the legislation. It underlines the centrality and importance of such principles.

The second issue that we have I think was described by Universities Australia in their recent testimony before you as being a threshold issue. It is one that we believe really does need to be addressed in the final stages of concluding this legislation. It is that universities which are properly registered should have automatic general self-accreditation authority for all their courses of study. We see this as being quite fundamental to the character of the modern day university. Failing that, there certainly needs to be greater clarity on how self-accrediting status, registration and TEQSA's regulatory framework, together with the three principles to which I have referred, will operate in practice in relation to the universities. As a threshold issue we would want to see that principle of self-accrediting authority embodied in the act itself and not simply provided for in the standards.

The question of the conditions of registration, possibly adversely affecting well developed practices that universities have developed to facilitate institutional collaboration and exchange—section 26—has already been addressed in your discussion previously with Universities Australia. That particular discussion focused specifically on the question of dual sector institutions, of which Monash is not one.

The element that we are concerned with is that there should be no diminishing of credit granted to students or their opportunities to study overseas as part of their degree. We are concerned that such exchanges could be effectively precluded by the current wording, with consequent impact on students. We do believe that it is important that while there may be legitimate concerns informing the articulation of section 26, that we should see that it is not so sweeping as to preclude highly valuable, well regarded programs of collaboration and exchange in the global context.

The next point that we would want to make is that because threshold standards constitute the basis upon which registration depends, an open ended provision to add other standards is in our view unacceptable. What we would particularly want to see is clarification as to how the minister will make standards in consultation with the sector. The process of consultation and the development of the standards to date have actually been exemplary. We believe that the way in which they have evolved—I think we are now into the third draft of the proposed threshold standards—has seen all parties given the opportunity to present concerns and we have seen those concerns then reflected in amendments to the threshold standards. The fact that that can work well suggests to us that provision for a process of consultation explicitly would be a healthy and desirable addition to the act.

The question of investigative powers has already been discussed with Universities Australia. The feeling that Monash is that it would help if we were to make clear the circumstances that might generate an investigation but most importantly we would be suggesting that there be an early referral of any issues to the relevant institution should there be a matter for concern in order that those issues can be reviewed and quite possibly resolved rather than coming in heavy-handed with no prior notice or consultation with the affected party.

You have already addressed the question of appointments of commissioners and appointments to the higher education standards panel. We would endorse what Universities Australia has said that we do think it is highly desirable that the experience that is required of any appointee be specifically relevant experience in the sector. That is not explicitly provided for at the moment and it would certainly add to credibility. We are not disagreeing with the model; it is rather a case of the qualifications of those appointees.

There has been some brief reference to disclosure of information to the public. We see the way in which the legislation is currently drafted as being too open ended in character. In our view, any disclosure that would be unfairly prejudicial to a particular institution certainly should not occur. Any disclosure really should be justified by the public interest and we think that a tighter wording in that area would certainly be appreciated.

Finally, with reference to the Tertiary Education Quality and Standards Agency (Consequential Amendments and Transitional Provisions) Bill 2011 we would note that, consistent with the general self-accrediting status of universities that we see as being a threshold issue, the transferred authority to self-accredit should continue until TEQSA says otherwise, rather than continuing only until the transferred registration ceases. This is a question of the transfer provisions. Those would be the key points of detail that we would add.

I would simply like to reiterate that Monash, for its part, certainly has appreciated the process by which this bill has evolved. We appreciate the opportunity to present our views today and welcome your questions.

CHAIR—Thank you. Maybe if I could just ask first about your concerns with disclosure and there should not be disclosure that might be prejudicial to the organisation. Have you got some examples of where that might be the case and why?

Mr Buckingham—We do not have any specific examples, because we are talking here of prospective disclosure patterns. If we take the two examples that have been cited in the draft documentation already released, it could in fact be the case that the disclosure might go to the way in which a university presents its position in the international marketplace. We would want to know that if in fact the nature of what was being presented were to be detrimental to the reputation or standing of the university, that there had been in advance of the matter becoming a serious concern, a process of engagement around exactly what the issue was and an effort to resolve that rather than actually having to deal with the damage as an after effect.

Ms Wantrup—Could I add something to that? Section 196, which is the relevant section, just states that: TEQSA may disclose to the public higher education information that relates to anything done, or omitted to be done, under this Act.

There is no qualification or indication of what purpose the disclosure might be. Adding to the concern that it is just an unqualified statement, the examples in the explanatory memorandum give cause for concern because, for example, TEQSA might release information to aid prospective students to make more informed choices about where to study. That is an example of how widely this section could be administered.

Senator MASON—Do you think it should be a matter for universities to determine as to what information is released to students?

Ms Wantrup—That particular example?

Senator MASON—Yes.

Ms Wantrup—In the section in the act there should be an indication of what would be a proper purpose of disclosure. I am not saying that it should not be the case that there is information that helps students, but it should be in a more regulated manner.

CHAIR—Is your concern that disclosure may be used as a form of punitive action?

Ms Wantrup—Yes, it could. Another example could be that TEQSA launches an investigation and publishes that it is doing that. There would be nothing to stop it from doing that.

CHAIR—No, but it may wish to on the basis of re-establishing confidence in the regulator itself if there was such an issue that had given rise to significant public concern. TEQSA may want to publicly acknowledge that it is in fact doing an investigation of those matters. But it certainly may; it does not—

Mr Buckingham—If you go back to the origins of this legislation, Monash has no problem with the notion that where you are dealing with a situation of potential risk to the reputation of the sector, of what you could call the fly-by-night problem, where institutions are operating in a way that is either unethical or operating in an environment where the financial underpinnings of the institution put the student at risk, these are legitimate

situations that require attention and there is a public interest in dealing with that. We do not deny that where those circumstances exist, public disclosure may well be an integral part of the strategy for managing that situation. We are concerned with the way in which the language of the legislation is currently drafted because there is no regard to the possibility that the disclosure, publicly, prematurely or in an incomplete form may actually be both unfair and potentially prejudicial. There could be a situation where the circumstances have still not been properly established but public interest would require action of the kind proposed.

CHAIR—The legislation does not require disclosure; it gives the ability to disclose if TEQSA sees fit.

Mr Buckingham—What we are suggesting is that TEQSA should have regard to the potential for any such disclosure to constitute an unfair or prejudicial position as far as the particular circumstances of a particular institution. If in fact the judgement of TEQSA were to be that public interest requires that the evidence be laid out in a clear and unequivocal way, we do not deny that is a legitimate judgement to be made by TEQSA. What we are asking is that in making that judgement, it has regard to the consequences of what it does.

CHAIR—To assist the committee, through the Chair, would you be prepared to suggest the words that you believe could be incorporated into section 196 to assist that process? If not now, then on notice?

Ms Wantrup—I think that is a good idea. An example for instance in section 194 is disclosing information to certain government bodies where TEQSA has to be satisfied that the disclosure is necessary to enable or assist the authority to perform its functions or powers. Each of the other disclosure section clauses have some sort of indication of the purpose. I would welcome that opportunity if I could take that on notice to provide some suggested wording.

CHAIR—Of course the committee is happy to receive that. I am just thinking that where it is a discretionary disclosure you would assume that there is a process of decision making to exercise that discretion in the first instance. Coming back to the point you make, Mr Buckingham, for example, if there was an investigation or an inquiry being made by the authority into Monash University, I suspect you may think that is unfair in any circumstances. How do you avoid the problem that regardless of what the authority thinks, the person being investigated normally will think the investigation is unwarranted and unfair?

Mr Buckingham—I think I would go back to what I said right at the beginning of the presentation around the principles of regulatory necessity, risk and proportionality. What we are asking is that in the context of public disclosure it would be quite consistent with those principles that we would see TEQSA approach the question in a way that fully appreciated the fact that disclosure, the evidence of which has not been adequately established, is potentially quite seriously damaging to the reputation of the institution. What we are asking is that in any judgement to go public, that it be one that recognises that risk and takes into account the need for it to be a balanced, well considered evidence based judgement.

CHAIR—Sure.

Senator MASON—That is a difficult issue, Chair, because you or I or Senator Back could be under police investigation; that is just a statement of fact. It can be prejudicial, I accept that. It sounds prejudicial in fact but every day on the news you hear that. It is a difficult issue whether TEQSA should do its investigations in private without public disclosure. I do not know the answer to that but you are right to be concerned, I accept that.

CHAIR—We would be happy to hear some more. I think in general it is fairly light touch regulatory legislation anyway and it is a concern that maybe we are just simply jumping at shadows of course. Do you have any reason to believe that the light touch underpinnings of the whole bill will not apply in these circumstances anyway or is this simply a belts and braces type proposition you are putting to us?

Ms Wantrup—I think it is probably a belts and braces proposition, but there are aspects of the bill, for instance, holding back on the university's self-accrediting status for which I do not understand the reason. There is a list of reviewable decisions. They are the decisions that are reviewable by the AAT. Under section 38, the decision to refuse to change the category in which a registered higher education provider is registered is a reviewable decision.

When you look at clause 38, there are two ways in which there can be a decision to change the category of provider: one of them is by the provider applying for that change, so this reviewable decision would be a refusal of that application; and the other is if TEQSA itself initiates the change but that is not in the reviewable decisions. If a provider has been given a category, which we do not know quite what they are yet, and decides on its own initiative to change the category, it is not a reviewable decision. So, there are some aspects in the TEQSA bill that give generally cause to feel the need to be careful.

Senator BACK—With regard to membership of the commission and the panel, you have made mention of the request for amendment on the word ‘experience’ to ‘experience in the sector’. I notice the panel membership is a chairman plus four up to ten members. Do you believe that the legislation would be strengthened by actually incorporating perhaps a list of the range of skills sets that the minister might consider so that you ensure that you do not have gaps and you do not have too much competition in the same space? Would that actually assist the ministers themselves as well as the overall process?

Mr Buckingham—I think I have previously said that we do not disagree with the model itself and therefore I would not want to be actually canvassing the merits of adding to or subtracting from the numbers or pattern of representation. The problem that one would have is how specific should one be in trying to tie the hands of the minister with appointments.

Senator BACK—I was not suggesting tying of the hands as much as providing to the minister the opportunity from the higher education sector of incorporating those skills sets which the sector believe are necessary or would be beneficial to ensure that range of skills and relevant experience.

Ms Wantrup—Could I say something, please? At the moment the two sections about the panel and the commissioners refer to appropriate qualifications, knowledge and experience. So there is no indication there, just ‘appropriate’. I think that it would be helpful if the wording that Monash has put forward is not found acceptable, to give an indication of the skills sets. We have an example of that even in the Monash University Act for the appointment of some members to council in which the skills set provides that there has to be someone with financial skills or whatever. I think that would be very helpful.

Senator BACK—My own experience suggests that to be the case. Very briefly, because I know others will want questions, you make mention of the capacity of students to travel overseas, and there would be nobody who would dispute the value to the student and hopefully the organisation of that happening. Can you assist us with some indication of just how assessments should be made of the value of overseas institutions? Nobody questions a Harvard or a Stamford or whatever. Do you believe that it is necessary in the legislation or should it be up to the university as the self-accrediting body to actually establish the standards of the overseas institution to which a student would go and to which the university would then be satisfied with pass grades or whatever at that overseas institution? I just have a concern that left unregulated we could end up with—

Ms Wantrup—First of all, are we talking about clause 26?

Senator BACK—I believe I would be, yes. I am just going to Mr Buckingham’s opening comment.

Ms Wantrup—I would like to answer your question there but first of all just point out that clause 26 is one of the conditions of registration, so it is a condition that has to be complied with to maintain registration. It says, and it is quite unambiguous:

- (1) This section applies to a registered higher education provider if the provider offers or confers a regulated higher education award for the completion of a course of study provided wholly or partly by another entity.
- (2) The provider must ensure that the other entity provides the course consistently with the Threshold Standards.

Senator BACK—You are satisfied that actually takes account of the likely standards of the institution?

Ms Wantrup—No. First of all, Monash’s point is that it is not possible to comply with this in terms of the—

Senator MASON—International exchanges?

Ms Wantrup—There are international exchanges; there are also credit arrangements between the university and TAFE. Study abroad has been supported by the Commonwealth government for years and the universities have developed their own internal processes for assessing as to whether they can give credit to courses. Sometimes we have an exchange agreement with another international university in which the assessment is made as to whether the credit can be given to that university’s subjects when the student comes here. Some students come into the university just on their own, so there are a lot of individual cases. We have developed a very thorough system of assessing these core subjects. Just to explain, we have the appropriate academic experts to assess the courses or the subjects and precedents are set. Once that particular subject is accepted as equivalent to a Monash University subject so it can be given credit, then that is created as a precedent, recorded and then the next time it comes up it is already dealt with. It only lasts for three years and then it is assessed. In individual cases that are not within a precedent, there is a thorough assessment with the academic experts and it can take three months. These are processes that are in place and that have been for many years. I do not see any place for this within the legislation. I think it is an internal thing.

CHAIR—Surely that process you have just described is measured against the threshold standards if you are comparing it to your own courses which meet the threshold standards?

Ms Wantrup—No, I am sorry, Mr Chair, I would suggest that to say it complies with the threshold standards is not something that you can take across to another entity, like a TAFE—

Senator MASON—Foreign university?

Ms Wantrup—or to an international university. The standards about provider standards may be okay but there are category standards which would not necessarily be applicable. The series of standards that are the threshold standards are not necessarily able to be applied to other foreign entities and certainly not TAFEs. I do not know how you would say how the university would ensure that the course provided by the other entity is consistently with the standards because the standards are not talking about how the courses are run.

Senator BACK—I am a bit confused now. Do I understand that this is a concern that Monash has or is it something that it believes TEQSA should take a role in or in fact would TEQSA correctly say that is the decision of a university in determining the adequacy of an international university for its own students and let the university succeed or hang based on its own processes?

Senator MASON—It is part of the self-accreditation.

Ms Wantrup—Yes, that is right.

Senator BACK—I am just wondering where Monash stands in this?

Ms Wantrup—Where Monash stands is that clause 26 is referring to all of those arrangements: those credit transfers, the student exchange, study abroad, credit from TAFE. It is applying to all of those and it is requiring the university to make sure in every case somehow that the other provider is providing the course consistently with these standards which apply.

Senator BACK—You are suggesting that remains with the individual universities; you are not suggesting that TEQSA should take an overarching role?

Ms Wantrup—No. We are suggesting that clause 26, we suspect, is aimed at something else and that it should be identified what it is aimed at and it should be made clear what target it is getting at. The suggestion has been made that it is commercial subcontracting. It would be helpful if it could be identified what is the concern so that it could be made clear what clause 26 is about.

CHAIR—What do you think it is being applied to?

Ms Wantrup—It is clear in its terms. It is clear that it applies to all of those arrangements of credit transfer, student exchanges, et cetera and it will cover commercial subcontracting as well. It covers everything where there is a subject in an award that has been provided by another provider.

Mr Buckingham—Could I have a go at trying to just clarify exactly what we think is the point of concern here. It is that the clause as currently drafted is too wide in its application, that it is unambiguous and it would appear to require processes that go well beyond the existing procedures by which, for example, international student exchange and credit transfer provisions are undertaken by the universities, arrangements that have worked very satisfactorily up until now. If we were to apply the threshold standards to the host institution from which, for example, the student is seeking credit transfer, it would become such an arduous and onerous task to comply that it would, at the end of the day, compromise the ability to offer exchange and credit arrangements. That is the concern we have.

Senator BACK—Finally, because it probably does deal with the second part of my question if I have time, is that something you would also say is applicable across Australian institutions as well as internationally?

Ms Wantrup—In the case of say a credit transfer from an Australian university to another Australian university, they are registered under the TEQSA Act so you would have to think—

Senator MASON—They are also self-accrediting to apply—

Ms Wantrup—They are self-accrediting but also they have to be complying with the threshold standards because that is how they keep their registration.

Mr Buckingham—But it does arise in the case of credit transfers where TAFE is involved and that was covered in the—

Senator BACK—I would like to stay away from the TAFE transfers for a moment. An absolute bugbear of mine for many, many years has been this silo attitude of Australian universities where a student wanting to

move in the one course to one campus or one university to another has come up upon obstacles which I would say are none other than just simply the obstructiveness of individual universities. Are you suggesting a ray of light has come into the whole scene so that in fact with this TEQSA arrangement it will make it a lot easier for students with a legitimate reason to move universities to be able to do so?

Mr Buckingham—My personal judgement on that is that at the domestic level where all the higher education institutions are subject to the TEQSA provisions, the basis upon which credit transfer in those cases can be undertaken could well be simplified.

Senator BACK—Wonderful.

Mr Buckingham—That would be a desirable outcome. But, where you have to actually then apply the processes in respect of institutions outside the national framework is where you start to run into difficulty.

CHAIR—I am sorry, Senator Back, can I just come through and clarify that, because I am a little bit confused too. To me, section 26 says simply that if you are going to in effect allow someone else to provide part of your course then you have to ensure that that part someone else provides meets the same standards that you would. Is that not what it says?

Senator MASON—That is what Professor Craven more or less said before, did he not? He took the Chairman's view that in effect a self-accrediting institution here takes the responsibility, as it were, for those standards of the foreign institution or TAFE. That is what Professor Craven implicitly said. We will ask the department later on about the mischief they are trying to—

CHAIR—We will, but I am just trying to be very clear about what you say is the problem.

Ms Wantrup—Taking the case of an overseas university, it will have its own registration standards and they will not necessarily be the same as our threshold standards. It is not necessarily something that you can import to another university but that does not mean that it is not providing a subject that is equivalent to a Monash University subject. The assessment process that the university carries out is an equivalence process assessment—

CHAIR—At a strict technical level?

Ms Wantrup—Yes, just to subjects.

CHAIR—I see. Your problem is not that they are going to deliver the same quality, the same content et cetera that gives a complete course that you are then offering; you are simply saying that at a minute technical level it may not be able to tick every single technical box?

Mr Buckingham—Our concern is that the language of section 26, as it currently stands, is so open ended as to carry the implication that we would have to do much more than we currently have to do in order to satisfy ourselves that there is a basis for extending credit.

CHAIR—Maybe you should be, I do not know?

Mr Buckingham—We believe that we have very stringent and satisfactory credit arrangements in place consistent with the self-accrediting power of the individual institutions.

Senator MASON—I have one quick technical question. You mentioned section 58(1)(h) in your submission. The framework not only includes all of the things listed from (a) to (g) in 58(1) but also additional unnamed and unheralded standards right down the bottom, 58 (1)(h); is that a concern?

Ms Wantrup—Yes it is, and if I may, Mr Chair, add in paragraph (e) as well. There are paragraphs (e) and (h). We have the threshold standards which are listed and we know what they are: provider registration standards, category course accreditation, qualification, teaching and learning and information standards. They are threshold standards which we know we have to comply with to maintain registration. Our point is that (e) and (h) refer to other standards which may be added but are unidentified. They would not be known yet because they would be in there if they were known.

Senator MASON—We have not got the standards yet either?

Ms Wantrup—That is right, we have not got the standards either. I think you made the point before, Senator, or you made it in relation to another matter, that if there are to be additional standards—because they are very important, being the thresholds and they have to be complied with for registration—they should be added to by parliament if more are going to be added.

Senator MASON—Again, Universities Australia was not overly concerned with that but it does seem fairly loose, does it not?

Ms Wantrup—Yes.

Senator MASON—I suppose the argument would be that it has to be consistent. You are the lawyer, I am not a very good lawyer but it has to be consistent with (a) through to (g). I take your point. We will ask the department, I think. What do you think, Mr Chairman, we will ask the department?

CHAIR—Yes we will, and I should say I am a terrific lawyer because I do not have a degree in law. Thank you for your presentation to the committee today and your submission to the committee. We will now take a short suspension.

Proceedings suspended from 10.34 am to 10.47 am

CASS, Mr Martin, Deputy Chair, Australian Council for Private Education and Training**VIVEKANANDAN, Mr Ben, National Manager, Policy and Research, Australian Council for Private Education and Training**

CHAIR—I welcome representatives from the Australian Council for Private Education and Training—ACPET. Thank you for your submission and thank you for coming and appearing before us today. We invite you to make some opening remarks to the committee to be followed by some questions.

Mr Vivekanandan—Thank you. The Australian Council for Private Education and Training is the peak body representing private education and training providers in Australia, with more than 1,100 members in all states and territories. ACPET has approximately 90 members delivering higher education throughout all Australian states. Today our submission reflected two concerns that we have with the TEQSA bill relating to registration and accreditation timeframes and we would be pleased to discuss these matters with the committee.

CHAIR—Thank you. Do you believe that shortening the process would compromise the quality of outcomes?

Mr Vivekanandan—No, we do not believe that would be the case. The timeframes that we have proposed reflect currently similar practices that are occurring for registration and accreditation timeframes amongst the state bodies. At times there are significantly shorter timeframes than the nine months plus six months that we have identified.

CHAIR—Many stakeholders would like to see explicit recognition of universities' self-accreditation rights enshrined in the legislation. How do you view this from your perspective?

Mr Vivekanandan—ACPET's perspective is to represent out members which are non-self-accrediting institutions. We will probably refrain from commenting on the likes of universities.

CHAIR—If the government was minded to explicitly make that clear in the body of the legislation as being requested, would that impact upon your members in any way?

Mr Vivekanandan—No, it would not impact upon our members.

Senator BACK—Firstly, the legislation as it is drafted indicates that it will be cost neutral in terms of fee collection. Have your members expressed any concerns in regards to fee structures and the likelihood that they are going to impact or impede the activities of your members?

Mr Cass—Not to my knowledge not at this stage, no.

Senator BACK—So you are confident that perhaps the fees as currently structured are probably not going to be all that different?

Mr Cass—I think they are okay.

Senator BACK—You have heard, I think, earlier this morning, comments and questions with regard to the structure of the commission and the structure of the panel. Do you have any comment or any concerns with regard to membership of the proposed commission and/or the proposed panel in terms of the expertise being brought to bear or are you satisfied with the legislation as drafted?

Mr Vivekanandan—We would certainly want to see the commission and the panel have a thorough understanding of the non-self-accrediting institution sector within higher education. That is a viable element. There are around 143 NSAs registered in Australia and they need to be represented at the highest level within TEQSA.

Senator BACK—Just so that I am clear, you do not have any members who would find themselves in the self-accrediting university sector within the umbrella of the legislation?

Mr Cass—I do not believe that is the case, no, not yet although there may be some colleges—

Senator BACK—That is the question I ask, are you aware from within your membership of the likelihood of any of the organisations wanting to actually move to being—

Mr Cass—There is. There are some members, in fact one member I can think of that has already applied to become self-accrediting, not through this legislation but through the current situation.

Senator BACK—Presumably then, since you are not representing a particular concern by that group they have not expressed to you any concerns of the new structure over and above that that they are currently going through?

Mr Vivekanandan—That is correct.

Senator BACK—If I have other questions I will perhaps pick them up after Senator Mason.

CHAIR—I will just ask you firstly about the consultation process. Were you satisfied with the involvement of your organisation through the development of the legislation?

Mr Cass—Very happy with it, very happy with it, it was very inclusive.

CHAIR—Any concerns that you may have had throughout the development of the legislation have been addressed through that process to get us to this point?

Mr Vivekanandan—That is correct, we worked closely with DEEWR, the interim CEO of TEQSA and the interim chair of TEQSA and also consulted with ACPET's national board.

Senator MASON—I am just interested in a preliminary question: what is the difference between ACPET and CoFE? Is it a different discipline mix, what is the rationale?

Mr Cass—ACPET deals with members who are higher education providers and also VET providers. My understanding is that CoFE focuses solely on higher education and of course there is a significant difference in the number of members. My understanding is that CoFE's membership is significantly those colleges that focus on the theological studies.

Senator MASON—To go back to Senator Back's question, some of CoFE's members are universities in fact. I understand that. What is the discipline mix of your membership?

Mr Vivekanandan—Accounting, business, multimedia, natural therapies, linguistics, anything else?

Senator MASON—No law?

Mr Vivekanandan—Creative industries and there is law.

Senator MASON—Senator Back just reminded me that the standards have not been finalised. I put this to Universities Australia and I think it is fair to summarise their evidence that they are not happy with the fact that they are not finalised, but they are happy to work with the government and support the passage of this legislation prior to those standards being published. Do you agree with that?

Mr Vivekanandan—We agree with that position.

Senator MASON—As the Chair said, you are happy with the consultation process thus far and the development of the standards?

Mr Cass—Yes.

Mr Vivekanandan—Yes.

Senator MASON—It is true to say then that your submission primarily is concerned about the timeframes—

Mr Vivekanandan—Correct.

Senator MASON—that TEQSA has to respond to applications both with respect to registration and accreditation? Let me ask you a preliminary question: how long on average does it take currently to get accreditation?

Mr Vivekanandan—Course rotation is taking on average, and there are always exceptions, three to six months.

Senator MASON—You would say up to 24 months is just far too long?

Mr Vivekanandan—That is correct.

Senator MASON—Why is that? What is the problem in terms of accrediting courses if it takes 24 months for TEQSA to approve it?

Mr Cass—From an academic point of view regarding the time that it takes to develop a program? Let us look at it in terms of the lifecycle of a program in a world that is changing so dramatically particularly in the technology area. If you develop a program today and it takes a year to develop that program and then a further

two years to get accreditation, you are three years into effectively a seven- to ten-year lifecycle of the value of that program. So, you are losing delivery time, you are losing the value of that program content.

Senator MASON—What do you think would be an appropriate time in which TEQSA should have to approve a course? Forget new entrants, but to approve a course. What would you say would be an appropriate time?

Mr Cass—Similar to what we have now, between three and six months.

Senator MASON—Somewhere around there?

Mr Cass—But as you can see from our submission we have allowed in our suggestion a lot more for that.

CHAIR—Senator Mason, can I just ask a question?

Senator MASON—Yes.

CHAIR—Three to six months is what actually happens in practice now. What is allowed at the moment or is there no time limit?

Mr Vivekanandan—Because it is state-based there will be inconsistencies between different jurisdictions. My understanding is there is no top end allowable time.

CHAIR—The current bill actually puts a top end on it and you are suggesting that that top end, if it is exercised, would be far too long. Is there any reason to think that anything will change? The establishment of the regulator itself will not change the process of having the course accredited, will it?

Mr Vivekanandan—I think it will. To start off we will have a national view of accreditation; currently we have state-based regulatory authorities that assemble panels that review courses. My understanding is that there will be greater resources so that the assembling of external panels will be able to happen a lot quicker through TEQSA. I am sure you can speak with TEQSA about that arrangement later on today.

When we start putting a timeframe on the maximum, our concern is that gravity pulls the organisation towards that timeframe. Whilst we do not have anything in current practice there is the idea that we need to move on this application and accredit the course or make a decision, make a determination. We do not want to see gravity pushed towards thinking, we have nine months and if we have not made a decision then we will have an extra six months or, as is currently proposed, 12 plus 12.

CHAIR—You are suggesting that TEQSA will actually have more resources than currently available in the state systems?

Mr Vivekanandan—Yes.

CHAIR—So the three to six months practical accreditation process should in fact happen earlier?

Mr Vivekanandan—That is our hope.

CHAIR—Really the concern is not that the creation of TEQSA will make it longer but the fact that 24 months is there that people actually get dragged towards the worst performance indicator as opposed to the best performance indicator?

Mr Vivekanandan—That is correct.

CHAIR—I suppose that is a legitimate question for us to put to TEQSA and see how they will actually deal with that.

Mr Vivekanandan—We understand from consultations that there will be internal service standards that will seek to accredit courses in a far shorter timeframe than 12 or nine months, and we accept that, but the legislation will still be the superior document that can determine timeframes.

CHAIR—The other alternative is for there to be no timeframe, as is currently the practice. Thank you. Senator Mason, sorry for interrupting.

Senator MASON—Thank you, Chair. Mr Vivekanandan, in relation to course accreditation currently pursued by the states, what are worst practices currently in the states? Are there some states that take a lot longer than others on average?

Mr Vivekanandan—I think Martin would be better for that.

Senator MASON—You are covered by parliamentary privilege, Mr Cass, so you can say what you like.

Mr Cass—Yes. There is a huge variety of standards and practice and perceptions on what the guidelines are meant to be. In fact that is I believe one of the reasons why TEQSA is being put into existence, because this

variety of systems and standards that exist between the states is just a nightmare to deal with. The time delays and the reasons for those delays vary dramatically from state to state. To be perfectly frank with you in some cases, and it has been my experience, it has more to do with a parochial perception of what should happen versus what another state is doing. There is this competition that seems to go on which is awfully tiring to deal with.

Senator MASON—One of the reasons ACPET support the bill is that it sets uniform, national standards?

Mr Cass—Absolutely.

Senator MASON—Particularly for your members that operate in different states it would really assist you, would it not, in terms of business?

Mr Cass—It does and we believe it would.

Senator MASON—I take your point that course accreditation should be expeditious but moving from course accreditation to registration, with new entrants into the field do you still think that 24 months is too long?

Mr Vivekanandan—Yes, we do.

Senator MASON—You would understand why the regulator would be concerned to have a good look at new players?

Mr Vivekanandan—I do understand that but we should be mindful that a new player may be an operational vocational education provider so we are not talking about necessarily starting out cold from nothing. It could be somebody with a history of operation in tertiary education and therefore TEQSA has the ability to look at that provider and their history.

Senator MASON—What would you see as being an appropriate maximum for new entrants?

Mr Vivekanandan—Nine months plus six months. Course accreditation would be shorter than that.

Senator MASON—That is great, thank you.

CHAIR—Will the creation of a national regulator actually assist your members in raising the quality standard across your industry?

Mr Cass—I think it will. I think it will for the simple reason that you are not dealing with various states and again their perception on what the standards are. You would have one set of rules and you can work to that set of rules rather than spending a lot of energy trying to please lots of different regulators.

CHAIR—Do you think the regulator needs to be active in your sector, to take a very hands on approach?

Mr Cass—In what way? I am not quite following your question.

CHAIR—Given some of the events that have taken place throughout the sector, should it be a regulator that reacts to complaints or should it be a proactive auditing type regulator where it actually goes out into the industry on a constant quality assurance process?

Mr Cass—We believe quality assurance is of the utmost importance and whatever it takes to make sure that we maintain a standard has to be done.

Senator BACK—I do just have two questions. There would be programs offered by members that would be in competition with purely online courses, I would imagine, in various areas such as accounting and you mentioned the natural health areas, et cetera, and some of these would be offered from overseas institutions. To what extent do you understand TEQSA will have any power of regulation over those purely online and quite often overseas provided courses in competition with courses offered by your members?

Mr Vivekanandan—These overseas providers will be issuing Australian qualifications?

Senator BACK—Not necessarily, no, but that is a question that I had not even considered. I imagine if they wanted to offer an Australian accredited award then they would have to come under some degree of scrutiny by Australian regulators. I am more interested in somebody wanting to do a course in the natural therapies purely who is prepared to pay and to have it online and possibly out of a Malaysian or Singaporean or some other institution.

Mr Cass—My understanding is that TEQSA will only regulate those institutions that are actually onshore apart from Australian institutions who are delivering an Australian qualification offshore. That being the case, if I understand this correctly, I do not believe TEQSA will be able to regulate these institutions offshore delivering via online at all.

Mr Vivekanandan—They are not registered by TEQSA.

Mr Cass—So there is a competition issue there.

Senator BACK—Yes, and I just wondered for the future whether in fact that might become more apparent in the sector but anyhow I just wanted clarification. I understand it from your point of view.

The other one we have not been able to find many references to but there clearly will be a capacity within the new legislation for the cancelling or the deregistering of a currently registered course. One option is to consider it at the time of application for re-registration and knock it back. The other option is it would appear that there is the capacity for the cancellation of registration. Have you considered the text of the draft legislation with regard to deregistration or cancellation of an existing registration?

Mr Vivekanandan—I think when we talk about deregistration of an existing institution we would see TEQSA's role as, through its risk management, working with that institution prior to it coming to a point of being time to chop it off and de-register it. If there are critical concerns with an institution and they do not address the concerns raised by TEQSA then they should be deregistered. We see TEQSA as a partner in the higher education sector; not coming in at certain points in time and saying yes or no but rather having an ethos of working in partnership with institutions.

Senator BACK—It is covered in clause 101 cancelling registration. The fact that you have not raised this I take it that your members have no concerns with regard to the drafting of the legislation as included in clause 101?

Mr Vivekanandan—No.

Senator BACK—As you quite rightly say from the secretariats, the cancellation of a provider's registration rather than the registration of an individual course. Chairman, those were my only two questions, thank you.

Senator MASON—I have briefly another issue. Gentlemen, there has been some concern expressed in some of the submissions about TEQSA's investigative powers. Do you have any comment about that? Are you concerned about the power for search and seizure and questioning and publication of information? Have you given that some thought?

Mr Vivekanandan—We have given it some thought. We reviewed it in the legislation amongst our membership but no concerns were raised.

Senator MASON—No concerns were raised? Thank you, gentlemen. Thank you, Chair.

CHAIR—Thank you for your submission and for your appearance before the committee today.

Mr Vivekanandan—Thank you.

Mr Cass—Thank you.

[11.08 am]

ROSENBERG, Professor John, Representative, Innovative Research Universities

CHAIR—Welcome, Mr Rosenberg. Would you like to state the capacity in which you appear before the committee today?

Prof. Rosenberg—My substantive position is Senior Deputy Vice-Chancellor at La Trobe University but today I appear representing the Innovative Research Universities group. The chair of the group is Professor Ian O'Connor, who is Vice-Chancellor of Griffith University, but he is overseas at present so I was asked to represent the group.

CHAIR—We invite you to make some opening remarks to the committee to be followed by questions.

Prof Rosenberg—Thank you. Let me begin by just very briefly introducing the Innovative Research Universities Group. This is a group of seven universities, all of which are relatively young institutions, between about 15 and 40 years of establishment, but have common goals in terms of innovative research and teaching. We have institutions in each state and the Northern Territory. I will not go through all of those institutions but there is a lot of commonality between the group and we often work together in terms of submissions to inquiries such as this but also in terms of benchmarking and other joint activities.

Let me begin by saying that the group and I have been very pleased with the consultation process thus far in relation to this bill, particularly with Universities Australia. I have personally had some involvement in that as well and I believe there has been an excellent opportunity to work together to ensure that we get the best possible legislation.

Secondly, we strongly support the establishment of TEQSA. We see this as a very important body which can help to improve the quality and improve the standards of higher education in Australia. In that sense we are also very, very supportive of the legislation.

We see a need for this legislation for a number of reasons. First of all, there have been some difficulties with higher education providers, particularly over the last four to five years, and more so in relation to international students but there is no doubt that those difficulties with some providers have damaged Australia's reputation in terms of higher education. We are very concerned about that and I think having a stronger body to provide oversight of quality and standards can only help to improve higher education in Australia. Again in that sense we see this as very, very important.

In terms of the legislation, as I said, we have been very comfortable with the consultation that has taken place. We strongly support the submission made by Universities Australia and the work that Universities Australia has undertaken in relation to the legislation.

There really is only one area of serious concern that we have. This is the same area that Universities Australia has raised and it relates to the self-accrediting status of universities. Really a fundamental notion with universities is that they create programs of a high quality and accredit and deliver those programs in an independent manner. We see this as critical to all high quality universities around the world.

The legislation does not say that universities will not self-accredit but it does not make it clear that this is the fundamental notion of universities. At the moment the notion of self-accreditation is separate in the provider registration standards. We believe that this should be an included component within the main bill.

One of the reasons for that is if you look at how accreditation takes place, in fact the standard that is being set for non-university providers is universities. In most cases in the current processes within the states for registering higher education programs for non-university institutions, a panel is assembled consisting of university staff who have the appropriate experience and knowledge to determine the appropriate standard. So, it seems fairly self-evident that universities must be able to self-accredit.

That is our only serious concern with the legislation. I know the same concern has been raised by Universities Australia and by a number of other groups of institutions. We do believe it would strengthen the legislation to recognise that fundamental notion of universities being able to self-accredit their programs.

They are the only initial comments I wish to make, thank you.

CHAIR—Thank you, Mr Rosenberg. We did have quite a long discussion with Universities Australia about the self-accreditation issue so I will not go there with you. I am interested in the point that you make about the need for TEQSA to remain flexible and responsive to innovation and design and delivery in response to

current and future needs. How would you envisage a relationship being developed with TEQSA to ensure that they do not hold anyone back in terms of the ability to respond quickly to emerging needs in the university sector?

Prof. Rosenberg—I think this is partly tied up with the standards, some of which we have not yet seen. If I take an example of online delivery and flexible delivery using a number of technologies then there is a risk that a body like TEQSA could become extremely focused on things such as a student experience. The natural way to focus on that is through an on campus experience and yet more and more our students are not on campus; they are learning through other mechanisms but still having I believe an excellent experience or able to have an excellent experience. So, there needs to be some notion of change to standards over time as delivery mechanisms change. None of us can predict what those mechanisms will be 10 years from now. Twenty years ago we would not have thought we would have been delivering over the internet—the internet did not exist.

There will be new mechanisms for delivery that will be quite radically different. I do not know what they will be but I think it is very important that TEQSA is able to adapt and able to recognise that the standards that are defined will need to change over time, to accept that there will be other ways of delivering and other ways of providing a good student experience and a good student education.

CHAIR—Do you think the way TEQSA has been set up under the current bill enables TEQSA to be responsive in that respect or do you think it has made an organisation that is too rigid to change?

Prof. Rosenberg—In theory it does. The standards panel, I think it is called, is able to change the standards over time. The difficulty with legislation is that it always takes a long time for these things to change and perhaps some more flexibility for variation of standards without a very complex process might be helpful.

Senator MASON—Can we just go back to the beginning about the necessity for a national regulator? Is it your contention that the higher education system in Australia is such that if you have a university or a private higher education provider anywhere in Australia who is operating below par and fails that that could have a detrimental effect on all the players?

Prof. Rosenberg—Absolutely, and we have seen that. We have seen, as an example particularly in the international area, the effect of failures of a number of quite small providers in fact in most cases in Melbourne on the Indian market. It can have a dramatic affect because the media of course love such activities and are able to promote them and exaggerate to some extent the effect. Yes, it can, it is critical. I travel quite a lot on behalf of the university and when I visit institutions they will know about one small incident that has happened in Australia perhaps in a small provider and yet they will extrapolate that this reflects on the entire higher education system of Australia. It is critical I think that we maintain the highest of standards in all of our providers.

Senator MASON—It is an interesting point.

Senator BACK—That could be more a reflection of the advantage that the Indian person is trying to exact rather than the fact.

Prof. Rosenberg—It could be but it is like any other industry, one small player in the industry can damage the reputation of an entire industry very, very quickly.

Senator MASON—It is fascinating to look back on what has happened in recent times with Indian students. It is fair to say that it was a conflation of some issue with academic standards, sure, the failure of some colleges, plus issues of safety so all of a sudden people in India are thinking that Indian students are not welcome. It was never the case but that was the impression created, is that right?

Prof. Rosenberg—Absolutely. That was a combination of a number of activities but once those combinations occur, any element of that can again bring it back to the fore. A number of times we thought this had died down and then a small college would fail and it would all be back in the press and in the media yet again. I think it is very important that we maintain the right standards for all of our providers, of course not just because of damaging our reputation but for the sake of students as well. We want every student who studies in a higher education institution in Australia to receive a high quality and a good standard of education.

Senator MASON—It is interesting, is it not, that it is 2011 and we are now looking at a national regulator for higher education. Since federation it has been a state responsibility for accredited providers and accredited courses and now we are moving to a national provider. The argument used to be that if a higher education provider fails in South Australia that is South Australia's problem but you would say no, it is Australia's problem; is that right?

Prof. Rosenberg—Absolutely. I meant to mention in my opening remarks that one of the concerns we have is that this is currently a state responsibility and there is huge variability across the states in the way this is managed and implemented currently.

Senator MASON—I am not sure if you mentioned your discipline area?

Prof. Rosenberg—My origin discipline is computer science.

Senator MASON—I will not ask you about constitutionality because Professor Craven has already touched on that. The evidence thus far is that there has been more than adequate consultation by the government with higher education providers, and I think the government is to be applauded for that. The stakeholders that argue that they have missed out are the state governments thus far but you have been very happy with the consultation and the changes over the last six or so months?

Prof. Rosenberg—Very happy, yes.

Senator MASON—Are you worried about the provision of the threshold standards and all the other provider standards? We have got them in draft form but they are still of course being progressed. Does that concern you? Are you happy to leave that in the lap of the bureaucracy and the minister and seek the parliament to pass this legislation before those regulatory instruments are finalised?

Prof. Rosenberg—Ideally I would have liked to have seen the entire package at the same time. Again there is a lot of consultation being undertaken on the provider standards which I am involved in with Universities Australia and I think they are coming together very well. There has been a lot of change from the original version. I think the government has taken seriously the consultations and the input that Universities Australia has provided. As I said, ideally it would be good to see the entire package at the same time but I am not too concerned because there is a proper process for ensuring that those standards are appropriate. The framework legislation—

Senator MASON—You are a very trusting soul, I like that, but you are happy with the process thus far and that you think that the government will continue to listen to your concerns even after the bill has potentially received parliamentary approval?

Prof. Rosenberg—They are the indications I can see at the moment, yes.

Senator MASON—I like it, Mr Chairman, when the stakeholders trust the government. I think it is a very good thing.

CHAIR—It is only untrusting academics who become senators that have to repair the previous damage.

Senator MASON—Professor, do you have any members in Innovative Research Universities that are dual sector providers?

Prof. Rosenberg—No, I do not think so.

Senator MASON—Charles Darwin?

Prof. Rosenberg—Charles Darwin is, sorry, yes, the most recent member university.

Senator MASON—So do you have any concerns because it has been raised, and I think it is a legitimate concern, about dual sector providers and the current legislation? Professor Craven did address the issue when I asked him this morning but I was not entirely convinced that an issue did not remain about, how do I put this, the complementarity of both the VET legislation and the TEQSA legislation in relation to multisector institutions. Are you happy with that thus far?

Prof. Rosenberg—I do not think I can comment on that. In our submission Charles Darwin did not ask for any matter in relation to it to be raised but I am not familiar enough with the issue to be able to comment.

Senator MASON—Any comment about the investigative powers and so forth or the capacity of TEQSA to publish information?

Prof. Rosenberg—I am very comfortable with that. I think that our Australian universities are strong institutions and that they do understand their responsibilities and I think in that environment I have no problem with those powers.

Senator MASON—That reflects what Universities Australia said. How about appointments to, in particular, the standards panel? There has been some, I think it is fair to say, special pleading by various interest groups for inclusion on the standard panels. Do you think the case has been made out, for example,

that staff or students or state governments might be included? Do you think there is an argument for that or should again that be left to the minister?

Prof. Rosenberg—This would be a personal expression rather than the IRU but I would very much like to see student representation. I think it is very important that there is a student on that panel.

Senator MASON—We can put that to the department shortly.

Senator BACK—Thank you, Professor Rosenberg. Firstly, I am just interested in, if you like, the criteria for membership. I would have thought that most, if not all, universities would hope to aspire to be or are in fact innovative research organisations. What sets you apart as a group?

Prof. Rosenberg—We have a lot of areas of common interest. It is not just about innovative research; it is also about innovative teaching, about being willing to be open and to benchmark against each other. We provide each other very detailed data about the operations of each institution. We deliberately only have one institution per state so that in one sense domestically at least we are not really in competition with each other and that allows us to be much more open.

I think we have in many areas a common approach, for example, we all have a great interest in providing opportunities for students from disadvantaged backgrounds to undertake higher education. Now every institution would say they do, and they do to some extent, but we all have a very strong focus on this area and a number of the institutions are located geographically in areas where there are large numbers of students with disadvantaged backgrounds. Also, many of us have campuses in regional areas, and again that is a common interest across the group.

Senator BACK—Given the fact that you only have one from each state and territory, as you say, the door is closed to any institution that might wish to sort of come under your umbrella, except for Tasmania which I notice is not in?

Prof. Rosenberg—Yes, pretty much. We are not looking to expand. We believe we have a strong group that works well together.

Senator BACK—Can I ask a follow on question: does your group see any implication for future security of funding by the Commonwealth leading from this decision to establish the legislation that will bring TEQSA into existence or do you think that this all stands apart from future funding decisions by Commonwealth to the university and ultimately to other members of the higher education sector?

Prof. Rosenberg—I think that the way the legislation stands at the moment, the two are quite separate other than if an institution was deregistered, that would obviously have a significant effect. Apart from that my understanding would be that these would be kept quite separate and I would hope that they would.

Senator BACK—So would I. My only other question relates to an area that you have not covered in your submission but nevertheless I would be keen on your comment. Once established it is the intention over time that TEQSA overseeing university higher education and the legislation overseeing the VET sector will merge perhaps into one overarching body. Could you give us your view on whether you see that as a desirable move towards the future or whether or not you think the two sectors are sufficiently different that their administration should be kept separate?

Prof. Rosenberg—I could see some advantage of bringing the two together as long as such a combined body recognised that many of the aspects of the two sectors are quite different—the goals are quite different, the style of the approach to teaching is quite different—but there is also a lot of commonality as well. We are now seeing a lot of blurring across that boundary. In Victoria in particular a number of the VET TAFE institutions now deliver higher education programs and so they are dealing already with both sides within the one institution. We have four dual sector institutions in Victoria and they have to deal with both sides. There could well be some advantage of bringing the two groups together under a common accrediting body, providing that accrediting body still had the ability to recognise the difference in standards and in approach of those two sectors.

Senator BACK—From the view point of the end user, the view point of the student, you would see this as a positive over time, being able to move through and upwards perhaps as a person who has had some time away from education coming back into it, discovering their capacity and then being able to sort of move higher through the education system, the post secondary education system?

Prof. Rosenberg—Yes, I would and in fact there is a lot of work being undertaken by many institutions, including my own, in relation to exactly that, to providing pathways for students. There is a lot of evidence

that students particularly from low SES backgrounds find a pathway through a TAFE institution much more comfortable than directly entering a university, and often we encounter difficulties at that boundary when they transfer into the university. Longer term, having a single accrediting body may well make those pathways a little easier to construct.

Senator BACK—I concur with that.

Senator MASON—Sorry, could I just ask a quick question? Senator Back has inspired me again to ask a question about TAFE because here in Victoria TAFEs can actually offer degree courses, can they not?

Prof. Rosenberg—Yes.

Senator MASON—Again, that would be an argument to streamline articulation, if you brought it all under one umbrella. It would make it easier, would it not?

Prof. Rosenberg—I would have thought so, yes.

Senator MASON—When you have different providers offering in a sense bachelor's degrees, for example, it does make some sense, does it not?

Prof. Rosenberg—I think so. We have the other complication of course at the moment that the VET sector is essentially managed by the states and the higher education sector is managed by the Commonwealth and that creates its own difficulties as well.

Senator MASON—I think the states provide two per cent of funding for universities and 70 per cent for VET so there is different, how do I put this, regulatory responsibilities?

Prof. Rosenberg—Yes.

CHAIR—Thank you, Mr Rosenberg for your submission and your presentation to the committee today.

Prof Rosenberg—Thank you.

[11.31 am]

McCOMB, Mr Adrian, Executive Officer, Council of Private Higher Education

CHAIR—Thank you for your submission and coming to the committee today. In what capacity do you appear before the committee today?

Mr McComb—I am the executive officer of the Council of Private Higher Education. I would give the apologies of my chairman, Dr Brian Millis, who is unwell and not able to be here today.

CHAIR—I invite you to make some opening remarks to the committee to be followed by some questions.

Mr McComb—We appreciate the opportunity. We are a peak body interested in the private providers of higher education. We tend to focus on higher education. We have got a pretty diverse range of members that stretch from hospitality through theology, education, nursing, law, physical education, design, accounting—a wide variety of higher education. A lot of our organisations have been established for a long time. We had one become self-accrediting last year and I anticipate two or three more before TEQSA is established in January, assuming all this goes ahead.

We have welcomed strongly the establishment of TEQSA as a national regulatory body. It is really a valuable development for institutions that are not self-accrediting universities. Currently we are accredited across a range of states. We have to also report to the Commonwealth for those institutions that are HEPS—Higher Education Partnership for Stability. There is the CRICOS—Commonwealth Register of Institutions and Courses for Overseas Students—for provision to overseas students. There are multiple levels of course accreditation. One of the challenges has been just the sheer amount of compliance that is going on. The idea of a single national regulator is a very, very important development. Most of our members have been through AUQA audit and the outcome of that has been that institutions that have a level of confidence in what they do. They offer courses that they believe are probably superior to some of the universities but they are very proud of what they do.

We noted that TEQSA legislation to be risk based and proportionate. We welcome that. As we see it developing, we see incentives being offered for institutions to improve their quality and processes and demonstrate their capacity. It looks to be a very good process.

We understand that universities retain autonomy and self-accreditation but having a single regulator still enables the development of a more level playing field. In many ways our institutions have been more highly regulated we believe than the universities in that they face accreditation unit by unit across courses. We have had years of engaging with the national protocols which were revised in 2007 and which introduced some level of mutual recognition but I do not believe that it has really worked as it was intended. There is still, for instance, no national reporting standard. Every state requires a different type of report or has a different reporting standard. The idea of having one report that a governing body can sign off on and have assurance that they are in good standing is a huge breakthrough. So, we have embraced this development of TEQSA.

In terms of the bill itself, we have been very appreciative of the thorough consultation process. We have been involved at all stages. We appreciate the wide range of contributions made. I would note particularly the work by Professor Craven and Michael Beaton-Wells for UA as being very helpful and clear. I am not a lawyer or a constitutional lawyer but they added a great deal of value to it.

If we have a concern it goes to the fact that the bill establishes TEQSA as an agency with teeth, and we see that it needs teeth, however in many ways we think the various standards to be applied are probably more important operationally than the actual regulator. There has been a good process established but we are still only working on the provider standards. Last week when I got the third draft and there was a significant change from the previous, I sent it out to my colleagues and I got a lot of comments back. I think things will settle down but I panicked a bit last week with the range of comments from them.

We are very pleased with the process. We think there is more consultation to be had around the standards. We are particularly interested in the university college and university of specialisation title and some of the issues around self-accrediting status. All in all, it is a very, very important piece of legislation for higher education. It puts us in world standing we think from everything we have been able to nail down on the sort of standards we need to ensure quality of higher education in Australia.

CHAIR—Thank you, Mr McComb.

Senator BACK—I just want to go to the concerns that you raised with regard to the timing. In fact I think you have just spoken of the standards. You made the observation that you had not at the time of the submission had an opportunity to consult your members. In the time since you made your submission, have you now had time to consult your members and if so, can you advise us what the feedback has been from your members therefore to the committee?

Mr McComb—I think there is concern about university college title and what that applies to.

Senator BACK—Can you elaborate on what that concern is, and university specialisation as well?

Mr McComb—University college title within the MCEETYA protocols is applied to a prototype university; it is really an intermediate stage for an institution to become a university. Now the standards have moved beyond that but they are not quite clear yet we think. We think there is a place for university college as a teaching intensive; not teaching only, but a teaching intensive institution. It may still have research, it would have scholarship, but it would not be research intensive and as comprehensive as a university.

The university of specialisation issue is not really so much with the standards of the university of specialisation but we think in the latest version it is probably not as differentiated from the university college as it might be, so there is some work to be done there. I have had some feedback but I have really only had a couple of days to gather comments from people and I think I need to actually meet with them and talk it through. There is a change of language and we need to work on it carefully.

Senator BACK—Given the fact that this committee is to report in the near future is there, as part of the consultation process, yet another opportunity for you to have structured interaction with the department to voice these concerns once you have them established?

Mr McComb—Yes, there is, and we have already been contacted by the department and we see a process. As it has in the past, the consultation has been very good.

Senator BACK—In regard to this same area, I asked a previous witness about funding. We obviously had release of information some weeks ago in what one might describe as league tables in terms of assessing the different participants in the sector. Do you believe that this legislation is likely to find its way into decisions associated with funding from the Commonwealth to the sector in regard to those, I will call them league tables but others might not?

Mr McComb—We would believe that funding should follow student choice, that the choice of student is going to yield a better result for the student and for Australia than some other body determining priorities. In the long term we would see funding following the student. This is about regulation and giving confidence that everybody in higher education offers high quality outcomes and meets the standards that are specified. We would welcome the focus on scholarship and teaching as informed by scholarship in the standards.

Senator BACK—Thank you. With regard to the university college and university of specialisation, I have a particular interest in the area of agriculture and agribusiness education and have a view that these two sectors have not been well served in recent years by the overall higher education university sector. Can you explain to me or do you have a view on whether or not in the draft legislation, the development of the university college and university of specialisation will aid or will hinder particularly opportunities for the establishment of institutions in rural and regional areas that may wish to cover the agriculture-agribusiness sector?

Mr McComb—I think your concern about the agriculture-agribusiness sector is valid and the decline in higher education in that sector is a real worry. One of our members is active in that space and has published papers explaining that we have got a real problem coming. Some of our members do take students from regional areas. It is a space that is mostly being served by the public universities and the decline is a major concern. Most of our members are not large operations; they tend to be focused on specific disciplines. I do not know how many would have capacity to deliver face to face into regional Australia.

Senator BACK—You do not see that the new legislation will hinder the opportunity for the establishment of such programs?

Mr McComb—No.

Senator BACK—Or assist it more?

Mr McComb—I think a single national regulator can really help build the confidence that everybody has in higher education. I also see that the establishment of a single regulator with one set of rules means that you develop people with expertise in tackling the issues. Some of the state agencies are very, very small and do not have sufficient volume to develop capacity in this specialist space.

Senator BACK—If an agribusiness or agriculture education provider actually wanted to provide an equivalence of courses across state boundaries, in fact this legislation would be more likely to assist than hinder that process?

Mr McComb—Yes.

Senator BACK—Thank you. How many members are within the council?

Mr McComb—We have 30 members spread over about 60 campuses.

Senator BACK—We heard evidence from ACPET earlier in the day. Is there a significant difference between the members of your organisation and that of the other?

Mr McComb—We tend to focus on higher education only. A lot of our members are also members of ACPET. I would say ours tend to be more longstanding, higher education only providers but there is a significant crossover.

Senator BACK—Between the two?

Mr McComb—Yes.

Senator BACK—Thank you.

Senator MASON—Mr McComb, your members offer degree courses from certificates right through to PhDs, do they not?

Mr McComb—Higher education diplomas through to PhDs, yes.

Senator MASON—It is a very broad charter?

Mr McComb—Yes, it is.

Senator MASON—Do you think into the future many of your members will seek the status of university college or a university of specialisation? Do you think there will be increasing amount of private higher education providers that will seek to do that?

Mr McComb—I believe so. I believe more will become self-accrediting. We are talking about institutions that have been around for many decades in many cases. They have a lot of experience in accreditation through many cycles and they have come through well on AUQA audit. I see university college as being an appropriate kind of branding for an institution that does not pretend to have the breadth and comprehensive spread of a university but focuses on a narrower range of disciplines, teaches them exceptionally well and gets great outcomes for students. All the AUQA audits of private institutions suggest that the student experience is very strong.

There actually has not been a failure of a higher education institution in that international space, I might add, from earlier comments. It is sometimes confused with some of the other problems that emerged. Yes, a lot of our members would be interested in that going into the future. They see it as a long process.

Senator MASON—Sure, but it is an important one. Your university college would maybe specialise in one or two areas and offer PhDs?

Mr McComb—I do not think they should be bound to offer PhDs but several do already. I cannot remember how many are actually accredited at doctorate level but it would be eight or 10.

Senator MASON—In Australia the title or nomenclature of university carries with it considerable weight, and I think all of the committee members would agree with that. University college is in a sense a halfway house, so it carries with it quite a bit of status, does it not?

Mr McComb—It does but it also exists in just about all other jurisdictions. It has disappeared in Australia and we would like to bring it back as meaning something that is quality and about teaching. It still needs to have capacity for research because if you recruit somebody who has got a strong background in publishing research they expect you to support it as their form of scholarship. We see research as a subset of scholarship.

Senator MASON—Yes, I understand. Mr McComb, you say something in the Council of Private Higher Education submission, and I cited it this morning to Universities Australia, which is a fairly strong statement but it is not inappropriate. You say:

From the perspective of the higher education provider, the standards are actually more significant to their operations (and more central to the effective operation of TEQSA), than the legislation that establishes the regulator.

You are talking about the provider standards and so forth that we have not seen yet, that are not yet in final regulatory form?

Mr McComb—That is right.

Senator MASON—Is the council happy to endorse this bill even though those standards are not yet publicly available or have not been provided for in final form?

Mr McComb—The quality of process thus far has been such that we believe we have been heard. One is not then happy with every last bit but we have been heard and it reflects our key concerns. There is an element of ‘chicken and egg’ here: the agency needs to be established in order to have the standards committee operational and develop the agency.

Senator MASON—I think it is fair to say some of the standards could have been made available already but it has been a—

Mr McComb—It is a huge amount of work.

Senator MASON—I accept that, and I think Professor Craven pointed out this morning and some universities have mentioned that, for example, under the higher education standards framework, benchmarks for research standards are a difficult area. To be fair as a summation of the evidence today, thus far most providers are so happy with the process—putting state governments aside here—that they are prepared to endorse the bill and wait some time, if needs be, for the provision of the provider standards. Is that your position?

Mr McComb—Yes.

Senator MASON—Do you have any concerns—and my colleagues have put this I think to all the witnesses—about the powers of TEQSA and so forth? Again some of the submissions have thought that the powers of TEQSA are too broad in terms of their investigatory powers, powers of questioning, powers to be able to publish information. Does that worry you?

Mr McComb—We have no concerns.

Senator MASON—Do you have any dual sector providers? I have asked Universities Australia and also of course Mr Rosenberg before you. Do you have any comment to say about that? Are you concerned about the meshing of both the national VET regulator and the TEQSA?

Mr McComb—Many private providers are dual sector. Theoretically some of ours are dual sector but in many cases the VET qualifications are virtually dormant or they may have one or two VET courses that are run as pathways. They are important but they are not something that we engage in particularly and I am not across the VET legislation.

Senator MASON—In terms of the standards panel there has been special pleading as you have probably heard listening to the evidence that certain interests should be taken account of—staff is one, students are another and the state governments also want to be listened to perhaps more intently. Do you have any comment about that?

Mr McComb—We would like to see somebody who had a background in non-university higher education. Some of the best minds in my organisation are people that have had extensive careers in the public sector and then come across and work with private providers. There are people out there that have a pretty sound understanding of both sides of the sector.

Senator MASON—Should that be included in the legislation? Should there be specific mention made of a requirement that the minister appoint to the standards panel someone au fait with the private higher education providers?

Mr McComb—That would probably change over time, would it not, and it would depend on the nature of the commissioners.

Senator BACK—The suggestion was put to other witnesses that provision could be placed into the legislation that both the commissioners and panel members ought be drawn from a range of different skill sets so as to not limit the minister or ministers but at the same time to ensure that there are no gaps. For example, especially on the standards side, as a previous employer, I would have thought that there would be a role for those who employ graduates from the higher education sector to at least have some representation on the standards body to ensure that those who actually do employ graduates are heard.

That is not to say it ought to dominate by any manner of means, and in the same way questions have been asked of others. Could this not be covered by including into the legislation, if you like, the range of skill sets that would best serve the objectives of the act?

Mr McComb—That sounds a positive addition to the legislation. We would support that.

Senator BACK—Thank you. Sorry, Senator Mason.

Senator MASON—Not at all. Mr McComb, it is really whether the legislation should be more prescriptive in setting out who should be part of the panel setting the standards. Again, most people seem to be fairly happy with the current situation—

Mr McComb—Yes.

Senator MASON—but hope that the minister will appoint people that understand private higher education, understand student needs, understand staff needs and so forth. Thank you and thanks, Chair.

CHAIR—Thank you, Mr McComb, for your presentation to the committee today. We are happily running a bit ahead of schedule so we will now suspend for lunch and resume at 1.00 pm.

Proceedings suspended from 11.56 am to 12.54 pm

MacDONALD, Ms Terri, Research and Policy Officer, National Tertiary Education Union

REA, Ms Jeannie, National President, National Tertiary Education Union

CHAIR—Welcome, and I invite you to make some opening remarks to the committee to be followed by questions.

Ms Rea—Thank you. The NTEU, as you would be aware, represents the industrial and professional interests of about 25,000 staff employed at Australian universities right around the country. We welcome the opportunity to make a submission today. We have been involved in the sector consultations held with the department and made a submission in relation to the exposure draft of the bills. As we have noted previously in the consultations and in our submissions, the NTEU agrees with the premise that the sector should have clear and strong standards that set high entry barriers for all higher education providers, that is consistent with the new quality focus regulatory system and that provides a basis on which the higher education institutions can establish and further develop quality and diversity.

As we have outlined in our submissions, we support the changes that require TEQSA's processes to have reference to natural justice and to due process particularly in relation to the conditions or sanctions including the removal of the title university. There were several things I just wanted to make a brief comment upon, namely, the self-accrediting status of universities, the AQF descriptors, the panel and the investigative powers of TEQSA.

In relation to the self-accrediting status of universities, we believe that although the bill before us is much improved from the first draft we saw, it does still have flaws in a few areas. First and foremost, while part 1 of the bill infers the authority of a higher education provider to self-accredit courses of studies as part of the transitional provisions, it fails to enshrine the self-accrediting status of certain higher education providers. While we understand that this is to be referred to in the provider standards, our very strong preference is for universities to be given legislation protection as self-accrediting institutions.

Such recognition does not lessen the important of other providers of tertiary education but in fact acknowledges that there are different types of providers in the system and that they have different and distinct roles and functions. As such, we believe the elements that define the different types of providers and afford them unique status should be recognised. Furthermore, while we agree with the premise that universities need to be accountable, the right of universities to self-accredit must not be compromised. The notion of the independence of universities is fundamental, it is derived through statutory protection and related to principles of academic freedom and it originates from the right to self-accredit.

Self-accreditation also defines what a university is in the international context which of course is extremely important. To not recognise this fact within the bill is problematic and does raise some speculation. We can only assume that the details regarding university accreditation are to be delegated to the provider standards that are of course yet to be confirmed.

On the subject of the provider standards, which I know is not the immediate concern of this inquiry but we will use this opportunity to flag, we are very concerned that the standards in the current draft do not make reference to a university having a commitment to the promotion and protection of academic freedom. The existing protocols which are largely the basis of what has been transferred into the provider standards include the clause 16.2.4 which, with your indulgence I will just read, it is quite short:

The institution has policies, procedures and practices in place which encourage academic integrity and honesty as well as free intellectual inquiry in the teaching research and scholarship activities of the institution.

We would be arguing very strongly that something very similar to that clause be included in the definitions in the provider standards.

Moving to the AQF descriptors, we also have some concern about the possible incorporation of the Australian qualifications framework, the AQF, into the higher education standards framework. The national qualifications framework within the AQF are essentially descriptors of the national education system structure and qualifications, and they were prepared for that purpose. Should these descriptors be adapted as regulatory tools for TEQSA, as it appears is intended, then we are very concerned that the overly prescriptive nature of these descriptors may impair the self-accrediting status of universities. Where that could be a problem is that one of the aspects of being a self-accrediting institution is that it is indeed at universities that new awards and qualifications are actually often developed and also varied. That is indeed part of the role of universities to do that.

Furthermore, the NTEU is highly concerned that where there is scope for the AQF descriptors to be incorporated into the legislation without additional public consultation it could be highly problematic. We would argue that there would need to be further public consultation about this—reiterating again that the AQF descriptors were developed actually for another purpose and not specifically for this purpose. The movement of things developed for one thing into another thing, and I am sure you are familiar with this, can often present problems and unintended consequences.

Another point we would just like to make strongly is in relation to the panels. While we support the decision to preclude any commissioner from sitting on the panel, we are very disappointed that our previous recommendation to specifically have regard to the interests of staff as well as that of students and states and territories, which is currently listed in the draft on the panel, has not been adopted. We note that the outline of the part in the explanatory memorandum for the bill states that:

The appointments are made by the Minister who must also ensure that Panel membership contains an appropriate balance of professional expertise and demonstrated expertise and that the interests of States and Territories and higher education students are represented on the Panel.

We represent academic staff and academic staff are the people who have the demonstrated expertise and will largely be responsible for implementing any standards. The NTEU does find it incongruous that staff would not have their voices heard in relation to development of these standards. Furthermore, the NTEU believes it does send a negative message to the sector of the role of the staff working in institutions of higher education. In order to address this we ask that clause 167(2)(b) be amended to include a new subsection 167 (2)(c) to include staff working in higher education.

I would like to make a comment in relation to the investigative powers of TEQSA. We still have some concerns in this regard despite the considerable amendments. In short it is not clear from the extent of the investigative powers whether it is a role of TEQSA to regulate the sector or to police providers. If it is the former, the NTEU believes that the investigative powers given to TEQSA in part 6 of the bill are both excessive and disproportionate to TEQSA's roles and responsibilities. While TEQSA is charged with the authority to review to the extent of determining whether an institution is meeting its obligations under the provision of the act, it is our understanding that existing or potential higher education providers must apply or reapply to TEQSA to be registered and/or have their courses accredited. It would therefore seem logical that if at the time of registration or accreditation TEQSA believes the provider to be of a high risk then the regulator has both the authority and the obligation to impose the necessary conditions on that provider, noting that these conditions could include a requirement to provide relevant data or information as requested. If a provider fails to comply with these conditions then clearly it would be in breach of its registration and the provider could have its licence to operate withdrawn.

In short, it would seem that the burden of proof is on the provider and if it fails to comply there are resulting measures including deregistration which will remedy the situation. We note that there are similar investigative powers under the ESOS, the services of overseas students act, and that this is provided as a justification for TEQSA's own proposed extensive powers. It remains that if the purpose of TEQSA is to regulate then its role does actually differ from the duties endowed upon relevant officers through the ESOS legislation. Under the ESOS Act, the relevant department or authority may be required to investigate complaints in relation to the treatment of a distinct group of students or an individual student's rights. This differs significantly to the duties of regulation and quality auditing which is TEQSA's role and purpose. As such, we do not understand under what conditions TEQSA would need the powers of search and entry or to compel a person to give self-incriminating evidence and so on. To the extent that TEQSA will be charged with enforcing the ESOS legislation, the ESOS Act itself gives the necessary powers of investigation in relation to those matters.

I will make a final comment on the consequential bill in relation to the division of various responsibilities between state and federal regulators. This division has been a factor in place in the overseas students market at risk. Currently state authorities hold significant responsibility in relation to registration and re-registration of courses, the regulation of the delivery of education programs and enforcement against infringement of the act and national code.

As such, the NTEU maintains that the conditions imposed by various state and territory regulatory bodies on education providers are assumed through TEQSA. TEQSA is properly resourced to integrate state and territory accreditation and regulatory functions, and the legislation enables a regulatory framework in which the delineation between state and federal responsibilities is clear.

In conclusion, as we stated in our submission, we strongly support the establishment of a regulatory authority for higher education that works in the public interest and emphasises accountability and transparency. However, this must be balanced with recognition of the independence of universities charged with the role of promoting academic freedom and critical inquiry. I will close in emphasising again that the expertise of the staff working in universities must be explicitly recognised and included in the panel. Thank you.

CHAIR—Thank you, Ms Rea. I note your closing comments and that is how your submission closes too, but it probably just leaves a little bit unclear your position in terms of support for the bill or not?

Ms Rea—We are supportive of the bill but we would suggest you reconsider the points that we have raised, particularly in relation to the inclusion of staff in the constitution of the panel and in relation to the recognition of the self-accrediting status of universities.

CHAIR—The self-accrediting status has been fairly widely canvassed.

Ms Rea—Yes.

CHAIR—In terms of the staff representation, how would you see that working? I think you have indicated you cover some 25,000 university staff?

Ms Rea—Yes.

CHAIR—There is probably a bit more than that in total. Should simply anyone be included or would you see them actually as a staff representative? Should there be sort of a representative role of the staff which I guess would entail a voting process or is it simply a matter for the minister to say that if someone has got a staff background they become eligible for appointment regardless of who they are?

Ms Rea—There are a number of processes currently used to get expertise on various panels and boards and so on, often which, if they involve stakeholders, involve nominating a list of potential people of high expertise. What I would ask back is where there is an explicit view that students should be involved, how that process is going to work as well.

CHAIR—Indeed.

Ms Rea—As a major stakeholder in the sector, we would clearly want to argue for a stakeholder approach to making such nominations.

CHAIR—What I want to just tease out is would that person then be there to represent that body of people or simply be using their expertise in that field to contribute to the panel?

Ms Rea—I would think the latter because the purpose of the panel is not as a stakeholder representative body; the purpose of the panel is actually to reflect the diversity and the diversity of expertise that can come from the sector. Our issue is that others are mentioned as being required to be represented and our members are the people that actually do the work and have the expertise but there is no mention of them.

CHAIR—The other area I just wanted to ask you about is in your submission you say, ‘The Union’s concern over TEQSA’s independence from political influence remain.’ I am not actually sure what you mean by that?

Ms Rea—Again, we have concerns gained over many years of experience of political involvement in aspects of the sector where there has clearly been a political hand in previous administrations, despite bodies that are supposed to be entirely hands off. I would refer to the ARC under the previous government. Terri, did you want to add something there?

Ms MacDonald—That actually refers in particular to the minister approving the strategic plan of TEQSA and its annual plan as well. There were particular clauses making reference to that and we just wanted to flag that as a concern. We are not saying that it would happen but there is potential for it to happen down the track where a particular view point of the minister might influence the direction of the regulator in the way that it goes in terms of its strategic orientation. That was the concern that we were flagging in that in particular.

Senator MASON—Ms Rae and Ms MacDonald, I was a member of the NTEU when I was—

Ms Rea—We are aware of that.

CHAIR—I notice he is not on the life membership board.

Senator MASON—People were horrified that I was. In fact I remember receiving a congratulatory note from the NTEU upon my election to the Senate, you will be pleased to know, Chair.

Ms MacDonald—We are not an affiliated union.

Senator MASON—You mentioned that you have 25,000 members. Is that just in universities or is that throughout the higher education sector?

Ms MacDonald—Throughout the sector.

Senator MASON—So it is even broader, good. Are you happy with the consultation that you have been engaged in?

Ms Rea—We were happy to be engaged in the consultation. We were concerned that the initial consultations were invitation only and were closed consultations. It would have been I think useful for the sector if there had of been a broader involvement in considering the matters before it reached the draft legislation stage, so in the manner of having a discussion paper and so on and so forth. But, as I have said on a number of occasions, the process of consultation ended up being inclusive, did bring in the stakeholders across the sector and I think has resulted in a bill that does have quite broad approval and support across the sector.

Senator MASON—Yes, I think that is a fair point. Compared to the response from the sector of six months ago, prior to Christmas, when I think the bill then was greeted with suspicion by much of the sector, that is not the case now and I think that is a fair point.

Ms Rea—I think that concern was because people had not seen it until the first time we got to see a draft.

Senator MASON—You mentioned academic freedom. Do you think it should be enshrined in the legislation or the standards? What is your view? It is a difficult thing to enshrine academic freedom in a way, is it not? It is a difficult thing to enshrine but how would we do it?

Ms MacDonald—If we could have it legislatively we would love to have it legislatively. We have been working on the principle of academic freedom to be within legislation for some time now. We have been working with Senator Carr's office and we have had a number of draft pieces which we have put together. It is an important thing and yes, there are certain points of debate on it—should it be very prescriptive or should it be a broad principle? From our perspective it would probably be more of a broad principle but it still should be noted because it is a very important element in academic inquiry in our universities and elsewhere.

CHAIR—I can recommend a fine Senate committee report into academic freedom for you to consider if you would like.

Ms MacDonald—I am aware of that particular one.

Senator MASON—Even as an aspiration, even that would be of some benefit?

Ms MacDonald—Yes.

Senator MASON—As the chairman mentioned to you, the makeup of the membership panel has been a debate we have had all morning.. There has been a mention from students and staff that they would like to be involved and some of the state governments have said they should be involved also. You are quite right to point out that states are specifically included not as members but that their interests should be considered, which is slightly different. How the minister actually approaches this I am not sure but it is certainly an issue I know that is alive to the committee.

You also mentioned the powers of TEQSA. I think it is fair to say that the committee has put to many of the witnesses this morning the concerns that the NTEU raised. I think it is fair to say most are not too concerned about it. I am not saying your concerns are not valid but whether it is Universities Australia or the Innovative Research Universities or Monash and so forth, they do not seem to be too concerned. Why would that be? Are you more sensitive to the concerns that perhaps university staff may be targeted by these measures? I am not sure.

Ms MacDonald—There are principles of fairness and of what is appropriate. Our questioning goes back to whether TEQSA is a regulator or is it meant to police what is going on? Essentially you have taken a regulator and given it huge powers. We do not understand how those powers are to be used and if its role is regulation because the mechanisms are there for it to act if the provider is not doing the right thing. We do not understand why you need to have the authority to go in and compel someone to give self-incriminating evidence.

Senator MASON—I do not think that is right, is it?

Ms MacDonald—Yes, it is.

Senator MASON—They cannot compel people to give—

Ms MacDonald—Under certain circumstances within the legislation it is our understanding that they can.

Senator MASON—It is going to be very narrow I think. People can give you permission for search and seizure. Do you not generally need a warrant even under this bill?

CHAIR—You do.

Senator MASON—I think that is right.

Ms Rea—I do not think you need it under the bill; it would already exist if it came within other acts.

Senator MASON—I am not trying to diminish your concerns. We will put this to the department in a minute anyway of course.

Ms MacDonald—Our reading of the bill was that essentially you had very broad and encompassing powers and that the reason for this was that it was available to similar, for want of a better word, regulators under other acts, under the ESOS Act and things like that. That was the reason given, that it was just a standard thing across the board. We are asking why it needs to be so. We just would like to have that explained.

Senator MASON—In a few minutes time the committee will ask for an explanation. Thank you very much.

Ms Rea—Our concern with it is that it is overkill when those powers already exist, as we mentioned, in relation to the ESOS Act when that needs to be used. Other powers exist under other acts including the criminal act if required. We want to know whether you need to keep adding more.

Senator MASON—I see your point.

Ms Rea—We will wait and see.

Senator MASON—The aim of the ESOS Act is for a particular purpose and to use those same powers for a broader purpose or essentially the same powers for a broader purpose is not necessary.

Ms MacDonald—Again, what is the role of the regulator. Even though this is vastly improved draft legislation or proposed legislation to what we originally saw and what was originally presented to the sector, it still comes across as a regulator that polices as opposed to a regulator that regulates. That was how it reads when we looked at it.

Senator MASON—I am not sure what the difference is between a regulator that regulates and a regulator that polices.

CHAIR—I would have thought it is both actually.

Senator MASON—I am with you, Chair.

CHAIR—We will seek to clarify that too.

Ms Rea—We will wait to hear from the department as well.

Senator BACK—In terms of the questions being asked I think the eventual intention is that TEQSA and the VET regulator actually are seen to come together. I just wonder whether or not the reason for the legislation being put in there in this form in fact is to create uniformity eventually down the line, but I do not really know. I just have really only the one question. In the event that the legislation actually was amended to satisfy your concern about self-accreditation, does that then largely take away the concerns that you have for representation on the panel? In other words would it diminish or reduce your concern?

Ms Rea—No, it would not. The issue of self-accreditation is we think primarily important. The other one is in relation to the recognition of the people we represent. Speaking on their behalf, they are the people who have the professional expertise and the demonstrated expertise and by not including them as a group as an area of expertise but naming people all around them, in effect diminishes the status of academic and professional staff in universities.

Senator BACK—Yet I think in response to a question from the chairman your view would be that in the event that somebody representing staff or somebody who was a staff member was appointed to the panel, you are satisfied that their role would then be to act as a full panellist not just as an advocate for staff?

Ms Rea—Yes, because my understanding is that in bodies such as this, and having been involved in others in previous careers myself, whilst one comes on to such boards and panels bringing a particular set of expertise, once one is there one operates adding to the capacity of the panel or board to do their job.

Senator BACK—We are satisfied that the establishment of TEQSA under the legislation is to have no impact at all on funding for the higher education sector. In the event that this legislation was in fact to have some control over or relationship to funding, I see the link there more directly in terms of the staff seeking representation than I do on the actual panel itself.

Ms Rea—In this case we are not advocating in terms of it being industrial and maybe a related to funding matter. We are actually talking about it in terms of professional expertise and indeed the identity of our members as academics with expertise in their disciplinary fields.

Ms MacDonald—It makes specific reference that the panel should make reference to the interests of students and the interests of the states and territories. It just seems incongruous to us that it does not include the interests of the staff who actually work in the sector because, aside from being the people who actually implement a lot of the policy that goes on, these are the people who are faced by our own set of circumstances which are unique to higher education, such as the need for workforce renewal, and all sorts of issues regarding workloads and professional issues, et cetera,. These are outside of what happens to students and states and territories so these are quite specific. They do not only happen within universities; these issues are also across the board in TAFEs as well. There is a commonality there. We would just ask that the panel has regard to the professional interests of staff as well as students and the states and territories.

Senator BACK—Can I ask further to a question that was asked earlier, your membership extends across universities and the higher education sector, does it also extend across both the state and the privately run higher education institutions?

Ms Rea—We cover the University of Notre Dame, Bond and I have covered ACU.

Ms MacDonald—We have members who are in ELICOS centres, English language centres and in TAFEs. In TAFEs they are more the general staff members, not the teaching staff, but we still have certainly a membership there.

Ms Rea—We have a lot of allied teaching and we also have members in the purely research institutes as well. We are across a broad notion of education and research in the higher education sector.

Senator BACK—I see where the draft calls for the minister to appoint people with relevant expertise. One would be hard pressed to think that would not end up with somebody having the relevant coverage you speak of but I do understand the reason behind you seeking that inclusion.

CHAIR—Thank you, Ms Rae and Ms MacDonald, for your submission to the inquiry and your presentation to the committee today.

Ms Rea—Thank you for the opportunity.

Ms MacDonald—Thank you.

[1.26 pm]

HAWKE, Mr Ian, Interim Chief Executive Officer, Tertiary Education Quality and Standards Agency Taskforce, Department of Education, Employment and Workplace Relations

HAZLEHURST, Mr David, Group Manager, Higher Education Group, Department of Education, Employment and Workplace Relations

SCHOFIELD, Ms Lisa, Branch Manager, Tertiary Education Quality and Standards Agency Taskforce, Department of Education, Employment and Workplace Relations

CHAIR—Welcome. I note that the Senate has resolved that an officer of a department of the Commonwealth or a state shall not be asked to give opinions on matters of policy and shall be given reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policy or factual questions about when and how policies were adopted.

Before I ask you to address some of the concerns that have been raised throughout the submissions, first let me acknowledge that witnesses without exception have congratulated the department on the level of consultation and the effectiveness of the consultation. The committee notes that and congratulates the department for those efforts.

I now invite you to make some opening remarks. I am sure you will be able to pre-empt many of our questions but those that you do not we will ask at the conclusion of that.

Mr Hazlehurst—Thank you, Chair. I thought it might be helpful for me to provide some opening remarks against, as you suggest, some of the key issues that have been raised and also ask my colleague, Mr Hawke, to provide some opening comments too from a slightly different perspective in his role as interim CEO.

Of course we are pleased that stakeholders by and large have been positive about the engagement we have had with them. We have actually found it very helpful ourselves and we believe the process has been one that has been beneficial on both sides and of course led to a better product. It seems to me that there were four or five key issues raised this morning, and I might just cover them briefly.

In relation to the one that has almost uniformly been raised, being the self-accrediting status of universities, I think it is the position of the government that there is actually not much disagreement in terms of the principles. The government certainly does not seek to debate the question of self-accrediting status and its axiomatic connection with universities. Taken together, the two bills actually do entrench the notion of self-accrediting status. Universities would come into the new regime with their self-accrediting status recognised expressly through the consequential and transitional bill, and, as has been noted, it would be expressly addressed in the provider standards.

Of course we understand the positions that have been put; they have been put quite clearly and vigorously over a period of months. It is really now a question of what the parliament wishes to do with those concerns. Indeed I know the minister is still thinking about the issue as well. Beyond that, I do not have any particular new observation to make, although of course I am happy to answer any specific questions about that issue.

CHAIR—We may assist the minister with his deliberations.

Mr Hazlehurst—Indeed. I will just mention briefly on the question of standards. There have been a number of observations about the desirability of having all the standards contemporaneous with the passage of the legislation. I would just make two broad observations around that. Some witnesses, and indeed some submissions, acknowledge the distinction between the threshold standards and the other standards. Some also have noted that in fact it is the threshold standards that are the actual regulatory standards; they are the standards that TEQSA would use to work out whether someone gets registered and/or could be deregistered or could have a condition placed on that registration.

The government's position has been that those ones should be well advanced at least in the process of development of the legislation, and indeed the provider standards, as has been noted, have been the subject of extensive consultation already and I think a third draft is now publicly available for further comment. The government has also indicated that the qualification standards will be based on the AQF framework which has been the subject of extensive consultation as well. Of course it would actually be a little surprising if that were not going to be based on the AQF.

Beyond, the obvious point to say is that the whole point of setting up the standards panel is that it then be engaged in the process of the making of the other standards. There is a bit of a chicken and an egg problem

basically in terms of the full development of all the standards in advance of the legislation being passed that actually establishes the standards panel. I think the government's position is it has been important to have the threshold standards well advanced but for the other standards, it will be a process of evolution that will involve intrinsically the standards panel itself.

I would also just note that the transitional provisions require that the standards panel review the provider standards I think within 12 months or at least commence a review within 12 months. Again, it is quite clear that the intention is that those entities established under the legislation then need to be part of the process of actually further developing the standards.

CHAIR—To clarify this too, and it may be not quite what you are talking about at this point, but as I understand it, the threshold standards will comprise the provider standards and the qualification standards but the bill defines a threshold standard as the provider standards, the qualification standards and any other standards made under paragraph 58(1)(e).

Mr Hazlehurst—Yes.

CHAIR—Is that an inconsistency that has created some confusion and do we actually need to clarify those points?

Mr Hazlehurst—The bill has been drafted in that way to provide additional flexibility so that down the track, if there are other standards that it is believed appropriate should be part of the threshold standards, there is capacity to make those. It is fair to say that some stakeholders are concerned about the flipside of flexibility, that is, that there is a degree of uncertainty around what might then become part of the threshold standards, if you like. On the other hand of course the provider standards themselves over time might evolve as well and potentially include other things that are currently not in it. It may well be that that flexibility can be picked up through—

CHAIR—In fact one of the submissions actually talked about the need to be flexible and for the whole process to be able to develop and grow. Have you finished talking to us about the standards? Mr Hawke, did you have anything you wanted to add on standards and then we will ask some questions around that issue?

Mr Hawke—No, all I would do is emphasise the same point that the two standards that are critical for the regulator, and which must be in place in advance of when the regulatory switch goes on for TEQSA, are the provider standards and the qualification standards. They are well advanced, and I think on the current timetable there is every prospect that they would be completed and, through a disallowable instrument processed through the parliament, well ahead of the point at which the regulatory switch goes on, which would not be until January 2012 for TEQSA in the current timetable. Whilst everyone wants certainty about those things, it is clear to me that on the current timetable they will have certainty well in advance of the point at which they would become regulated against as instruments used by TEQSA in its regulatory approach.

On the other three standards, I would have emphasised to you the consultative nature of what we, being Professor Bradley and I, have embarked on particularly with respect to consultation with the sector over those standards. We are particularly engaged directly right now in consultations with the deputy vice-chancellors (academic), for example, on teaching and learning standards and we have engaged in a conversation with deputy vice-chancellors (research) of universities about research standards. It is clear that that dialogue will go on for a number of months and I would expect right through the second half of this year, and obviously will be overtaken by the standards panel through its leadership once the membership is resolved and appointments are made to that body.

TEQSA does not need those standards to regulate but it is very clear it has a mandate under the legislation to develop those standards. In the view of Professor Bradley and me, the only and desirable way for that to occur is for it to be through a consultative process with the sector.

If we are to reflect particularly in the teaching and learning area on international dimensions to this and what is happening elsewhere in the world, teaching and learning standards are highly contentious. They are much debated by academics right across the globe and with great differences of view still prevailing in many parts of the world. It is not an easy task to arrive at a specific landing to what might constitute a document that prescribes teaching and learning standards for the sector. That is why the consultation is so important. It will not be something that we land as an outcome certainly before the standards panel is formed, and I would think for an extended period beyond that.

The evidence is that the sector is very ready to have that debate and consultation and do understand the importance of getting to a shared view of what an approach to teaching and learning standards in the sector would look like. There is a process to engage in, in order for us to get to that point however.

Senator BACK—Is it as contentious in the Australian higher education university sector as it is in other countries? You mentioned this teaching and learning contention.

Mr Hawke—The short answer is, yes, I do not think there is any doubt about that.

Senator BACK—Are you aware in other jurisdictions how they are moving to try to resolve this?

Mr Hawke—There are similar debates going on in the United Kingdom, for example, right at the same point. In fact, Professor Bradley is there right now discussing issues like this with leaders in the sector in the UK. There are similar discussions going on across the European Union about these things and equally in the United States there are similar debates going on.

It is quite pervasive across higher education worldwide. It is motivated by the wish of communities to see more explicit attention to the quality of the sectors, wherever they are in the western world. It is very clear that there is a public expectation on the part of governments on the one hand and on the part of the stakeholders and consumers of higher education, the students, that they need greater levels of certainty about how we define the quality of the teaching and learning experience within our sector.

It is not a simple thing to either diagnose or arrive at a simple statement of these things. A very easy outcome would be to suggest the idea that we test for it. We develop a test and specify some minima around teaching and learning outcomes and test against that to see if the performance of universities is adequate. That may result in all sorts of unhealthy dimensions to teaching and learning practice in universities. It may result in universities seeking to teach to the test when much broader considerations of knowledge and new knowledge in the higher education context are much more important.

These are not simple concepts to define and prescribe. It is important that the sector feels an ownership and capacity to influence the way in which they develop over time. As I say, it is quite pervasive across the world at the moment as a really dynamic debate.

Senator BACK—I imagine our previous witnesses are listening carefully and nodding their heads in furious agreement with you.

Senator MASON—In relation to the threshold standards, I enjoyed your candour but I am just looking at the actual document, I think it is the third draft. Comments on this draft are not due until Thursday, 2 June so there is still a fair way to go. What some of the providers have argued here this morning is that these threshold standards are as important, if not more important, than the bill itself. I am not trying to throw a spanner in the works, suffice to say that when the government seeks the cooperation of the parliament, the parliament has to be satisfied that the standards when they are developed will accord with firstly, the act and secondly, with the expectations of the stakeholders. They seem to be quite happy and indeed they seem to be very trusting of government, perhaps because the consultation has been so comprehensive overall. Except with respect to the states—we will get to that in a minute—it has been comprehensive and enjoyed by all.

I am not trying to be negative about it but do you see so far as the opposition is concerned, why there would be concern about this? The government will be asking the parliament to give the okay to these provider standards that are effectively more important to providers than even the bill establishing TEQSA. It is not a small thing.

Mr Hazlehurst—It certainly would not be appropriate for me to make an observation of what the opposition might think about it.

Senator MASON—You see the point though, that is all I am asking?

Mr Hazlehurst—I do understand the point. I suppose that is why both the minister and the department have been keen to progress quite vigorously the process of the development of the standards. As you noted, it is the third draft; it has evolved quite considerably since the first. By and large the feedback that we have been getting is that people are getting more and more comfortable with those standards. I make the obvious point that they cannot be presented as the standards until the power to make the standards exists. So, there is again a bit of a chicken and egg issue here.

Senator MASON—I accept there will inevitably be a delay. I think that is fair. There will always be some hiatus, I accept that, but I think it is fair to say that if they were in final regulatory form, I suspect the opposition would be more comfortable.

Mr Hazlehurst—I am not really sure I can comment.

Senator MASON—No, you cannot but I am being frank with you, that is all. I am being very frank.

CHAIR—I make the point again that when they are in their final regulatory form, they are disallowable instruments.

Mr Hazlehurst—They are still subject to parliamentary scrutiny.

Senator MASON—Final regulatory draft form, if you know what I mean.

Mr Hazlehurst—I understand.

Senator MASON—I was not trying to be negative about the consultation process, although is there a reason why the states are all so miserable about it?

Mr Hazlehurst—I am happy just to make a brief observation about that. A fair characterisation of the consultation and engagement of the states is that it has also been very extensive. The relevant ministerial council has had on its agenda the question of TEQSA I think five times. There have been three loops of the country, if you like, by Ms Schofield and Mr Hawke engaging with each of the state governments around the transition issues. There has been too many to count, we do not have the numbers right here, of teleconferences and meetings of officials to tease out the relevant issues, and of course the states were involved in the legislative consultation processes as well.

I think the issue is that there are some matters on which we simply do not agree. I do not think that is a fault of the consultation process, I just think there are things that we do not agree on. Those are of course expressed, as is entirely appropriate, in the submissions that you have received, particularly from Victoria, WA and South Australia.

Senator MASON—To a lesser degree South Australia.

Mr Hazlehurst—I am happy to talk specifically about any of those issues.

Senator MASON—No, there are too many other issues I think we should cover in the time left.

CHAIR—Just before we move on, Mr Hazlehurst, it was actually put to us today that the states take more out of the higher education sector in the form of payroll tax than they actually contribute. Would that be accurate?

Mr Hazlehurst—I do not have those figures in front of me.

CHAIR—You might try and find out for us and let us know. Mr Hawke, you are courageous enough to venture an opinion here?

Mr Hawke—I need to make a declaration first that I have taken this job on a temporary basis through to the establishment point for TEQSA but I have a substantive position with the Queensland government from which I am on leave. In that capacity, I was the senior officer in the Queensland Department of Education and Training that has responsibility for regulation in that state, including higher education regulation, the regulation of the VET sector, international education and non-state schooling.

As I have observed practice at state and territory level that relates directly to your question, I think quite likely the only real exception is Queensland to that statement in principle. The source of the exception is the now billions of dollars over the last decade or more that has been spent by the state in the Smart State agenda, largely spent on research infrastructure in our universities in Queensland. Certainly there has been a wide acceptance that the level of engagement and funding from states into the sector is quite modest in other parts of the country.

CHAIR—I think you have assured your return ticket, if you require one now, to Queensland.

Senator BACK—It might be the only state that you are not welcome. It is relevant though in the event that as you say, Mr Hazlehurst, there is not unanimity and there is not going to be. It does then beg the question: in the event that this legislation does go through, what will be the impact on higher education institutions in each of the states and territories given the fact that there may be either neutral or hostile state education regulatory authorities or authorities to the new legislation.

Mr Hazlehurst—The way of answering that question is probably to talk about a couple of the specific issues that remain of concern. For example, you will have seen in at least two of the submissions a concern about the interrelationship between registration and establishment. We have had lengthy conversations between us and state officials around that, and indeed ministers have discussed it as well. It remains the

Australian government's position that those matters are clear in the legislation, that the power of the state to establish a university or any other state entity for that matter has not been changed.

There was considerable concern about the interaction between other state laws and the legislation now being considered, but again, as a result of the interactions that occurred, we believe we have thoroughly investigated the way in which those interactions might occur, and believe there is now clarity in the legislation. I think it might have been Professor Craven or Mr Beaton-Wells this morning made the observation that, in terms of legislation of this type where regulation is being provided for at the national level, of entities that are otherwise affected by state legislation, the only way to effectively do that is to say that, to the extent that there is overlap, the Commonwealth legislation prevails, but in all other cases, the state legislation remains effective.

There is provision for further clarity to be provided on that where there might be some doubt, where there might be some legislation at the state level that might be perceived to be primarily to do with regulation of higher education, but which it does not make sense for that to be the case. We cannot quite think of what that would be, but there is a provision then to expressly say that that state legislation is not overridden. I believe that those issues have been taken into account.

The other significant matter that the states have raised is the question of the actual making of the standards themselves. It remains the case that the Australian government's position is that the Commonwealth minister will be obliged under the legislation to consult with the states. This was something that was discussed between ministers, and Minister Evans asked that this provision of a requirement to consult be expressly included in the legislation, and to take those matters into consideration, but that the Australian government, having established the regulator, will be the authority for the actual making of the standards, on advice from the standards panel, which is also obliged to consult extensively on the advice that it provides to the minister.

Senator MASON—You spoke in passing about the research standards. I think Professor Craven mentioned these this morning as still an issue of some concern. How will the benchmarks for research relate to the ERA—Excellence in Research Australia—results? What is the interconnection there, or is there not one?

Mr Hawke—The ERA results provide for the sector and for the regulator an interesting reflection on research performance across the sector, but they do not of themselves define minimum threshold standards. It would be up to the standards panel to determine an approach to the setting of standards that relate to research to both take account of what is known now through the ERA process to be new measures of performance against what might otherwise be the judgment the panel takes about what constitutes a minimum level of performance in research for a provider to meet the provider standards that define levels of performance in research. That specifically at the moment goes to what constitutes adequate performance in research for a university to be approved.

Senator MASON—Thank you for that. As Mr Hazlehurst said before, much of the architecture exists. We already have qualifications standards. The AQF has been brought in and that is fine, that all makes sense to me. But we have not quite got the research standards from anywhere else yet. Do you have to get another two or another three?

Mr Hawke—That is a conception of ERA. It is not a conception of what might constitute standards as judged by the standards panel. It might help the standards panel to reflect on what it thinks is desirable for any provider who wishes to be called a university to reach a threshold test. You do need to understand that for every discipline under ERA that got three, four or five on the index score that was determined through that mechanism, at some point in their history all of those centres of excellence were down at one and two.

Senator MASON—Precisely.

Mr Hawke—For a regulator to look at this area, it will need to look at what potential there is for any provider to build on a base level of research performance to the point where it might otherwise, through an ERA process, be judged to be excellent.

Senator MASON—Do you have any precedents for how you are going to benchmark research?

Mr Hawke—I emphasise that we are not starting with a blank piece of paper in the research standards area. There already exists a national code which is the subject of an agreement between Universities Australia and the two major public research granting bodies, the ARC and the NHMRC. In many respects, that code defines elements of research practice and codifies what is regarded as acceptable practice in research. On the one hand, the standards might embrace some judgments about performance and minimum threshold levels of performance that are required, but in other respects there is also codification of practice that needs to be embraced in a standards area as it relates to research. That national code is a useful starting point for that.

It is noteworthy that it will actually be up for review next year. With the standards panel being in place, it would be a legitimate engagement of the standards panel to be a party to that review and to use it to inform the way the panel then offers advice to the relevant minister—and in that case, it would be the minister for research—on appropriate development of standards in the research area within the framework.

Senator MASON—Thanks for that. My antennae are telling me that will be problematic, and I bet you I am right.

Mr Hawke—‘Challenging’ would be a word I would use, Senator.

CHAIR—Let us move on. If we have time, we will come back to standards if there are more questions. I think you were going to address item 2?

Mr Hazlehurst—I have touched on self-accrediting, so I think I am up to item 3. I wanted to make a brief observation around the investigative powers and powers of enforcement.

CHAIR—Are you a regulator or a policeman?

Mr Hazlehurst—I must confess, like the committee, I was struggling a bit to understand the distinction that was being drawn there in the sense that regulators of course have powers of enforcement. I suppose I would make the further observation that the investigative powers and enforcement powers that are embodied now in the bill are also subject to the principles of regulation that are now included in part 2. I think this point was made this morning, that the powers that are exercised in respect of enforcement are also subject to the conditioning requirements that are in part 2 of the bill around the principles of regulation. For example, the idea of escalating approaches as opposed to immediately moving to the more drastic use of the powers that are available is contained in the legislation. I would also make the observation that, of course—

Senator MASON—It is proportional.

Mr Hazlehurst—Yes, that is right. I would also make the observation that, of course, the legislation has to cover all providers and all circumstances, so it is kind of necessary to have a range of enforcement powers ranging from quite modest initial action to raise an issue with a provider through to matters like search and seizure of documents, for example. The circumstances in which that might occur might include preserving of evidence, for example, where there is in fact a concern about very poor practice, and a concern that that evidence might then be destroyed.

I would make the observation, which I think has also already been made, that those powers are also subject to scrutiny and supervision through the judiciary, through a magistrate having to actually authorise a search warrant, for example, and a magistrate being satisfied that the relevant requirements of the legislation have also been satisfied.

So there is no question that there are powers in the act that are quite strong; it is a regulator being set up with teeth. The basis upon which it can use those powers is also conditioned quite significantly by the other relevant provisions that have been included in the legislation about the regulatory activity of TEQSA. I can stop briefly there if you have specific questions about that.

CHAIR—Any questions in relation to the search/seizure powers? We will move on.

Mr Hazlehurst—There was some discussion this morning around division 2 clause 26. As you will recall:

This clause concerns situations where a registered higher education provider offers or confers a regulated higher education award for the completion of a course of study that is provided wholly or in part by another entity.

As you will recall, there was then considerable discussion about the way in which the provider must then ensure that the other entity provides the course of study consistently with the threshold standards. I suppose I would make the observation that the operative word there is ‘consistently’. This is an attempt to both acknowledge the self-accrediting status of the universities, for example, and at the same time say that with that self-accrediting status of course comes a responsibility to ensure that things that are in effect done in the university’s name are done in a way that is consistent with the regulatory regime.

Senator BACK—Would a process there assist or limit the process by declaring, if you like, a percentage of course content above which it then becomes questionable whether that is an award by that university? For example, if the figure was no less than 70 per cent would have to be done within the institution, is that something that would be of value or not?

Mr Hazlehurst—I do not believe so. There are models of practice already where significantly, if not all, of the provision of a particular course might be delivered through a third party. Provided the appropriate checks

and balances are in place, provided if you like the self-accrediting institution is exercising appropriate supervision over the quality and delivery of that course, we do not believe that that is offensive to the sorts of principles underpinning the quality regime. I might ask Mr Hawke to make an observation.

Mr Hawke—Universities set their own rules for this. Consistent with their self-accrediting authority, typically they have resolved certain academic rules within their academic governance arrangements that dictate that certain proportions of a degree, for it to be awarded by that university, must be taught within the university by its own people.

Senator BACK—And you believe within the context of the national regulation process that that is a process that quite rightly should rest with self-accrediting institutions?

Mr Hawke—I do, absolutely, and to the extent—

Senator BACK—What about those that are not?

Mr Hawke—To the extent the regulator is interested in that, it might be interested to see that the university is following its own rules.

Senator BACK—Let me direct the question towards those within higher education that are not self-accrediting.

Mr Hawke—Then the arrangements are quite different because the provider gets its authority to offer a particular course from the regulator through the accreditation of that course and the regulatory process that attaches to it. The scope for an accredited course offered by a non-self-accrediting provider to be varied could only occur subject to a request to the regulator for it to be varied. The same latitude is not there. It is a quite distinguishing feature of those in our sector who are self-accrediting versus those who are not.

CHAIR—I did think Monash University was really reading far too much into that clause.

Mr Hazlehurst—The obvious thing to say is that the alternative to this sort of provision might be a dozen or more further pages of legislation that laid out all of the requirements of a self-accrediting institution where they are seeking to have these sorts of arrangements in place.

CHAIR—Clearly the object is to ensure that the same quality and content is being delivered by a third party if it is part of the first party's course structure.

Mr Hazlehurst—Which of course is what the universities would want anyway. As Mr Hawke described, universities have quite thorough sophisticated approaches to ensuring this.

CHAIR—Really what it is saying is they have to go through a process to assure themselves so that they can assure you, if you ask, that they have gone through that process.

Mr Hawke—Absolutely. The interests of the regulator would be to see that the university is applying the same rigour to considerations of its arrangements with partners as it would apply to consideration of its own course offerings through the academic governance process of the university.

CHAIR—I think that is what a student would expect, too, in terms of the quality outcome.

Mr Hawke—Just to emphasise Mr Hazlehurst's point about an alternative to this being pages more legislation, universities are being very innovative in this area right now, and are characterising their activities by a host of different types of arrangements with partners of their choosing, and with contracted arrangements both domestically and overseas. Government policy is encouraging it in many respects. It is certainly encouraging universities to have stronger relationships with VET providers, and to facilitate pathways of students from the VET sector into higher education. There has been a very strong maturation of the relationships universities have with overseas providers, whether they are universities or other providers in other jurisdictions. To codify every one of those in a piece of legislation at this point would be almost to be restrictive of the potential for a host of other types of arrangements to evolve and emerge over the coming years. I am absolutely certain that that will occur. What this head of power gives the regulator is scope to examine those where it sees the justification to do so without trying to second guess the attempt by any university to be innovative and constructive in its dealings both domestically and internationally.

CHAIR—I think we are fairly clear and satisfied with that. What number are we up to now, Mr Hazlehurst?

Senator BACK—I wonder if the panel would mind addressing the question of membership of the commission and the panel?

Mr Hazlehurst—That was my number five, Senator, so that is a happy coincidence. On the panel itself, the issues that have been raised particularly related to, in effect, the skills and qualifications and backgrounds of the people to be appointed by the minister to the panel. It has been the government's position that there should be quite broad statements of the kinds of backgrounds and expertise and/or interests that need to be represented in the selection of those people so as not to kind of unduly constrain or limit the way in which the panel is brought together, but also to condition somewhat the selection of those people.

I do not believe that the government has a strong view on the kinds of discussion that has emerged today. You have particularly raised some issues about the kinds of skills. I do not think there is a strong view from the government about whether that might be a useful thing to have in the legislation that could improve it. Similarly, to be honest, I think it was thought axiomatic that the interests of academics would be reflected in the makeup of the panel as well. I do not think there is a strong view there either.

The point that is worth emphasising, which was in fact made by the previous witnesses, is the fact that the panel is not intended to be a representative body. It is not meant to be constituted by members who kind of represent the interests of a particular stakeholder group or whatever. It is meant to be an expert panel. Of course, that does not rule out a blend of experience and background et cetera, being on the panel. It is certainly the government's intention that that balance of experience and skills be reflected there. I just wanted to make the observation that there is no strong objection that I have detected on that front.

CHAIR—I think I understand what you are saying. It would be most unlikely that a staff member, given the other descriptors, is not going to be included in there, even if we were to specify that. I guess in one respect students would be the odd group out. What expertise would they bring to an expert panel apart from being an end user type expertise?

Mr Hazlehurst—I suppose it is explicit in the legislation that the interests of students be reflected in the makeup of the panel, whether that means it is a student per se or some other way of ensuring that those interests are included.

CHAIR—That is what I wondered. How do you do that if it is not a student? Is there a charter? How do they actually exercise that description?

Mr Hazlehurst—Do you mean how would the minister ensure that the makeup of the panel—

CHAIR—That the interests of students are represented on the expert panel. Is there any other way that the interests of students are represented? The fact we are here in teacher academia land, is that enough? Is that how we represent the interests of students on that panel?

Mr Hazlehurst—I am not sure that the intent of the legislation is to be prescriptive one way or the other on that. I do not have a good answer for you.

CHAIR—If it is there in the legislation, I want to understand what it means. Is it simply words that do not need to be there, or are they there and do they actually mean something?

Ms Schofield—I think the expectation out of the wording in the legislation would be such that the minister would need to, at the minimum, consult with student organisations before making appointments and writing to them and saying, 'We are establishing this panel; what do you think about it? What are your views about what it should do? Who do you think should be on it?' and those types of questions. Parts of the provider standards are out now. I am sure the teaching and learning standards, and potentially the research standards or others along the way, will talk about the sorts of expectations that exist on providers to provide particular things for students. So, the provider standards that are out at the moment quite specifically talk about issues around the provision of information to students and the way students need to be treated while they are at a higher education provider. While I guess I cannot answer the detail of that, I think there would be a number of ways that you could potentially have the interests of students in mind while going through this panel process.

Mr Hawke—I would add to that with some comment about data. We certainly envisage the way TEQSA builds its operating model, and the way in which the things that inform the standards panel work, would be informed by empirical data on a whole range of performance issues. One of them is student experience. A vast array of data is now being collected, and has been over many years, about the student experience. The course experience questionnaire is one source of that, and the graduate destination survey conducted now for several decades is another. That focuses on the university experience, I have to say. The extent to which we have solid information on the experience of students independently collected by the private provider constituency within the sector is far more limited. One of the things that the agency will be very keen to pursue is a standardisation of collections right across the sector wherever a student is enrolled in order to get clear evidence on which it

can base and develop its work, and by which the standards panel can use that information to build its approach to the development of standards. I think that is actually a very important source of information. It is not comprehensive across the sector at the moment. It needs to be.

Denise Bradley and I have been very upfront with the private provider community, both the peak bodies and groups of providers that we have spoken to, about the need for collections of data from providers in a standard format that enables the regulator to have a very comprehensive view of the sector as a whole. The gaps in this instance are in the private provider community. They know and understand that the regulator is likely to want from them standardised collections of data to inform their work. I think they accept that quite readily.

It is, I think, a big gap in the nation's understanding of its own sector that no-one can put their hand on their heart, for example, right here and now and say actually how many students are enrolled in higher education in this country, because we do not collect from a significant number of private providers any definitive information on those statistics. The regulator needs that, and we have certainly been clear with the providers that we will be expecting them to provide it as part of their obligations for being registered.

CHAIR—Thank you. We will now move to general questions, if there are any.

Senator MASON—With respect to the cost of TEQSA, I looked at a document a while ago, and I think it was \$57 million over the next four years. There is also a cost recovery. Are there any updates on those estimates?

Ms Schofield—I could run through the forward estimates for you for TEQSA over the out years. When TEQSA was announced in the 2009-10 budget, it was \$57 million over four years. Because the numbers for the first year were quite small, in the 2010-11 budget, so last May, the numbers were about \$70 million over the four years from that point.

Senator MASON—Does that take into account the cost recovery of services?

Ms Schofield—Yes.

Senator MASON—So it is about \$70 million?

Ms Schofield—That is right.

Senator MASON—In their evidence this morning, ACPET was concerned that the turnaround on the accreditation of courses of a maximum of 24 months under the legislation was too long. What do you say to that? It does sound like a long time to me, and I am not an expert.

Mr Hawke—One thing they were not correct about in their evidence this morning was that most state and territory regulatory frameworks under state law now have similar provisions. In Queensland, for example, the statute provides for 12 months plus a capacity to extend. It is an open question as to what is the ideal. Under provisions in the bill at 162(2)(b), TEQSA will be obliged to provide performance indicator information as part of its operational plan, and therefore give in effect service standard expectations out to the sector so they can get a clear expression from the regulator about what service expectations they might have in dealing with applications. What happens typically in this area is that some providers are very good at providing documentation for applications and reaccreditation and re-registration work, and some are not.

Senator MASON—I do not want to go there, because we have too many to get through. You will recall that Universities Australia first thing this morning said it is important—and it is fine for them, because they are self-accrediting. They said they want to move into the space quickly. I think they mentioned nanotechnology. If you take the time to develop a course plus two years, you are talking maybe three years. It is not a criticism, but as long as you are aware of it, because it does seem like a long time.

Mr Hawke—Yes.

CHAIR—The direct question is, if everything else is equal and industries are now getting their courses accredited within three to six months, do you see that changing, or do you see that reducing?

Mr Hawke—I think three to six months would be a best case scenario now in the sector. It is not even an average. I would expect TEQSA's capacity to deliver at a rate much ahead of the pace of the average performance across the states and territories now. I have every confidence in that. All of the evidence—its resource base, its capacity to respond, the level of engagement it will have directly with providers—would suggest it will have a much greater capacity to respond and make decisions more quickly than is the case now.

CHAIR—I think that is all the industry is interested in. Do you expect the process to be more efficient and quicker under TEQSA or the same or is it going to blow out? You are saying that you expect it to be at least as good as it is now, if not better?

Mr Hawke—I would go on record as saying I expect it to be better.

Senator MASON—Let us hope so, Chair. Thank you, Mr Hawke—that is good. Also concerning clause 58, there was some discussion as you might recall about making the higher education standards framework. Let me raise this for fullness with respect to clause 58(1)(e) and (h). The argument has been put that that is too open ended. I mentioned subclause (h) this morning, and one of the other witnesses mentioned subclause (e). Do you think that is too broad, and that the standards framework is not sufficiently circumscribed?

Mr Hazlehurst—I would start by drawing a distinction between (e) and (h).

Senator MASON—You are right. But (h) is broader still, is it not?

Mr Hazlehurst—The intention of (e) is saying you could have additional threshold standards, whereas (h) is just additional other standards. It seems to me that the concerns that have been expressed around (e) are quite different to the concerns, if any, that have been expressed around (h). Given that the threshold standards are the ones that have regulatory significance, I believe that that is where the concern is and not so much with (h).

Senator MASON—All right. Can you give the committee some comfort that that would not be used to make it more difficult for providers? The contention was that that could make it more difficult, and that it is too open ended for providers.

Mr Hazlehurst—I am not sure that I can pre-empt what a minister might do on advice from the standards panel in the future. I would make the observation that the minister will not be able to make additional standards except through the process of the standards panel's providing advice. Were there to be other threshold standards that come into existence, it would have been on the basis of advice from the standards panel to the minister. The minister cannot just dream them up and implement them. I can give you that level of comfort. They would be part of the process of the whole system that is being established here, which includes the standards panel.

Senator MASON—It would confine the minister's discretion; fair enough.

Mr Hazlehurst—But I am not sure I can add much more than that, really.

Mr Hawke—The panel itself is required to consult, and quite extensively.

Senator MASON—I am jumping around here, so just bear with me, if that is all right. There was some discussion during the day about dual sector providers. Will there be sufficient complementarity between the VET regulation and TEQSA? It has been raised by multi-sector participants. Can you add to the discussion thus far? Mr Hawke, are you happy that it is all going to work well?

Mr Hawke—Let me respond. The focus of the conversation thus far during the hearing has been about the dual sector universities. I think it is relevant to point out to the committee that, of the 190 or so registered higher education providers that we have in Australia, more than 100 of them have activity in both sectors. This is a very significant issue for both regulators and it is something we are having a dialogue with the VET regulator about right at this moment. It is very clear from the criteria that TEQSA will apply for regulation when compared with the criteria that the VET regulator will apply to its regulatory functions, that there are a very significant number of common elements, and they tend to focus on the characteristics of the provider. Before we get into issues around individual courses or packages or whatever, they focus on the provider. TEQSA and the VET regulator are interested in the governance of the provider; they are interested in their financial sustainability. We have a common interest in a host of things to make sure that they meet the criteria before we register them.

It is that territory where we think we can, in the first instance, achieve significant streamlining. We have conversations to go with the VET regulator on that. The delegation powers within both pieces of legislation facilitate that where that is necessary. It is much bigger than just five or six universities that are dual sector.

Senator MASON—You are quite right.

Mr Hawke—The number will only grow because all of the policy settings are driving behaviour that suggests providers will want to be in both sectors as they develop their activities. The conversations are starting. Two new regulators in the frame I think will continue with that, and no doubt when the

commissioners are appointed for both regulators, it will be a core piece of business for them to transact together.

Senator MASON—The publication of information was another issue that we discussed throughout the morning in relation to issues about investigative powers and so forth, and powers of self-incrimination, search and seizure and so forth. In clause 198(4), TEQSA has broad powers to enter details into a national register. Concern has been expressed by Bond University, I think, that details might be entered into, for example, a My Uni website, and that could be information that is prejudicial to a university, either to their commercial interests or just their public profile. Can you add anything to that? It seems to be quite open-ended as to what that information could be.

Mr Hawke—I think it is open-ended, deliberately, without being on the one hand prescriptive or overly restrictive of what the regulator might seek to do. In the case of universities, I think it is fair to say that universities are pretty open institutions now, and the measure of their public disclosure responsibilities are quite large, through annual reporting requirements, but equally through things like their experience with the AUQA process where reports of audits that AUQA conducts are already public domain once they are finalised on the back of an audit experience.

In one sense, the form of published works about individual universities that TEQSA may seek to make might have somewhat different form to the AUQA practice but in principle, they will be similar. If the regulator does a particular piece of audit work on an individual university and publishes the report, it is no different from the way AUQA conducts its business now. In fact, in the end, the regulator would have to make a judgment about what are the desirable pieces of information that should be on the public register that enable students to make more informed decisions about their prospective or current enrolments.

Senator MASON—Absolutely.

Mr Hawke—It is implicit in the consumer protection value system that underpins the legislation. On the other hand, I think the regulator will be quite discerning with what it chooses to disclose and what it otherwise knows about the provider but seeks not to disclose, for reasons of having the confidence of the provider to have an open relationship with that provider about their operations. I think there is a balance to be struck there. The regulator will be making judgments about those things all the time as it builds its relationship with registered providers. An important dimension to that are the conversations the regulator has with each provider about the risks that they are exposed to within the provisions of part 2 of the act.

Senator MASON—You are right, and I suppose I raise it—and I am sure the chair would agree with me—because this has some parallels with the My School website. It is early days, but even with the My School website, without getting into some sort of political debate, there is community concern and some debate about what information should be on the website. That is all I am saying. There is debate about it, and how certain information should be used. I do not think that is being too controversial.

I just want to make the point that, with respect to information placed on websites such as My Uni or My School, I agree that generally it is great to be transparent and give the consumer, particularly in higher education, more information. I am not against that. The concern expressed by Bond University and others is that we have to be careful about, firstly, what information we put up there, and secondly, how we use it. I just raise that. You would be aware, Mr Hawke, that this is a contentious issue.

Mr Hawke—I might connect this conversation with a question that was raised earlier in the day about an offshore provider, not registered in Australia, but seeking through an online process to attract enrolments from Australia. The fact that that provider would not appear on the higher education register in Australia would itself provide a message to prospective enrolling students to be cautious about that provider. The fact that it is not on the register is a signal that its bona fides might be in question. The register's content will actually provide interesting information for students to be guided by. It will also, by omission, provide messages to students about who to be cautious about, when someone is approaching them pretending to be a provider and yet that does not square with the information on the national register.

Mr Hazlehurst—It might be worth clarifying that the register per se is not the My University website.

Senator MASON—I know. I suppose a concern is that the My Uni website is embryonic, and we are not sure how it is going to fit in. Again, it is early days, and again I am not saying there is any conspiracy—that is not my point. It is just that it depends on how the information is going to be used and whether it would appear on that. I know it is early days, but I am just raising the concerns. I will be as quick as I can.

The University of Sydney has some legal advice. Have you seen their legal advice that claims that the AAT cannot hear matters concerning sections 59 about compliance assessments, section 60 about quality assessments or part 6 about investigative powers of the bill? They argue that this requires universities to pursue much more expensive common law remedies. Do you know anything about that? Have they raised that with you?

Mr Hazlehurst—Yes. If I was to paraphrase what I understand their concern to be, the university is concerned that a decision by TEQSA to even have a look at a university—in other words, not actually exercising any powers per se—should be subject to AAT review, in other words, at the prior step of saying TEQSA is interested in something and will conduct some initial examination of an issue.

Senator MASON—It did not seem like that, but is that your summation of what they are saying?

Mr Hazlehurst—I will confirm with my colleague, but I believe what they are concerned about is the very fact that TEQSA is looking into something can be of concern or reputational damage or whatever to an institution, and that that initial step should be subject to review. I suppose our concern would be, naturally enough, that one would be getting into a situation where the capacity of the regulator to do anything might be severely constrained if, before it can even start the process of investigation, it needs to exercise a power which is subject to review. I am paraphrasing a little, but I will just turn to my colleague to confirm whether I have done that fairly.

Ms Schofield—Yes, I would confirm that.

Mr Hazlehurst—We have discussed this with Sydney University at the Sydney University compact meeting which I attended, and that was the nature of that concern. We understand what they are getting at; we just would be concerned that introducing that level of external review to a regulator might make it difficult for the regulator to operate effectively.

Senator MASON—Universities are currently subject to AUQA, are they not? I do not think universities can say they should not be subject to TEQSA.

Mr Hazlehurst—Universities of course, like many institutions, are subject to all sorts of regulation. It would be unusual, I think, to find in other legislation a threshold decision of, for example, the occupational health and safety authorities to examine and complain to or to look into an issue that was subject to review prior to their actually doing it.

Senator MASON—You have no argument with me on that. If you are going to have a regulator, they have to be able to regulate, not subject to some sort of judicial review prior to the examination.

Mr Hazlehurst—I understand the concern that Sydney has. It is more just a question of it is not concerned about its practicality.

Senator MASON—That is right. How about community engagement? The University of Western Sydney says that, as part of the process of people applying to become a university, community engagement should be included as one of the necessary aspects of that. Have you thought about that? Should that be included among the relevant standards?

Mr Hawke—It certainly is a distinguishing feature of universities relative to other providers in our system. There is an expectation that universities are focused and engaged in community service in one form or another, usually defined by their own initiatives. In fact, those obligations are often the subject of expressed mention in their enabling legislation that exists. To the extent this should be codified and, dare I say it, the subject of a new set of standards within the standards framework, my own view of that is that we are a long way from needing or feeling any need to move in that direction. It is a defining characteristic of universities.

Senator MASON—It would have to be, would it not? You could not have a university without community engagement and consultation.

Mr Hawke—Quite right.

Ms Schofield—In the category standards that are out for consultation at the moment, carried across from the protocols, if you wish to be in the university category, there is a standard that says:

The provider demonstrates engagement with its local and regional communities and demonstrates a commitment to social responsibility in its activities.

Senator MASON—Is that in the current standards?

Ms Schofield—That is in the current standards.

Mr Hazlehurst—In the translation of the protocols, the draft that we now have includes that.

Senator MASON—That is pretty close to it, is it not? It is close enough.

Mr Hawke—It is exclusively within the university category.

Senator MASON—Which is your point, Mr Hawke, that it is a particular part of being a university. Someone wanted TEQSA's head office not to be in Melbourne; they wanted it to be somewhere else. I do not know about that, Mr Hawke.

CHAIR—It is probably you, Mr Hawke. You wanted Brisbane?

Senator MASON—I think it should be in Brisbane. That would be my submission, Chair, but perhaps we will leave that one for another time.

Mr Hawke—If there is no question, I will not respond.

Senator MASON—The Australian College of Theology points out in its submission that, although it has had a very long history, it has only been self-accrediting for about a year, and will be required to wait another four years to become a specialist university because it is now a five-year lead time to become a specialist university. Do you think that is an appropriate lead time?

Mr Hawke—I am not sure that that is correct. There is actually nothing to impede a provider applying for university of specialisation standing at any time. There is no time limit on that.

Senator MASON—Is there not a period which you have to wait for that accreditation to become official?

Mr Hawke—It may be something that is a condition of the regulator that granted them self-accrediting status, I am not sure. Certainly there is nothing implicit in the provider standards that would preclude a provider, regardless of their current standing, to apply for something different at any point.

Senator MASON—This morning I raised an issue from the submission of the University of Sydney that relates to the continuing powers of the governing bodies of universities. Do you see there being a problem with the work of university governing councils or senates being compromised by this new bill?

Mr Hazlehurst—No.

Senator MASON—You think that they are quite complementary to each other?

Mr Hazlehurst—I suppose we would make the distinction between that which is about the governance of the university, which might be established under legislation, and that which relates to the regulatory activities around the provision of higher education. In other words, of course it is entirely a matter for the state legislation to establish the university and to establish the governance arrangements for the university. It is then, of course, for those governance arrangements to operate consistent with the legislation under which they have been established. Naturally, if an activity is being regulated, whether it is higher education or occupational health and safety, the governance arrangements of the university have to be subject to that regulation.

Senator MASON—Of course they do.

Mr Hazlehurst—It does not stop the university being accountable and making the decisions, particularly as a self-accrediting institution for accrediting its courses et cetera; it just means that axiomatically the regulator also has to regulate in that space. If, for example, the university undertakes activities that the regulator believes are problematic, consistent with the legislation it is administering, and the regulator acts appropriately and lawfully within the powers that are described in the TEQSA legislation, of course the governance arrangements of the university, those governing the university, are bound by that lawful regulatory activity. It is kind of axiomatic. It would be a strange outcome if we set up a regulator but the powers of the university council could override the regulatory activity.

Senator MASON—Do you know what I think they are referring to? There was this debate a while ago in relation to the qualifications of certain universities. I am sure you will recall the debate.

Mr Hazlehurst—Sure.

Senator MASON—I suspect that this concern is a reflection of that issue. In other words, university councils wanting to call certain qualifications let us say doctorates, and they believing that universities being self-accrediting institutions and ancient institutions should have the ability to do that, and that public servants and governments should not have much of a role in that. I think that is really what they are on about. Is not that the nub of it?

Mr Hazlehurst—Yes, and the starting point is that, as self-accrediting institutions, the universities will have the power to decide what their courses are and what they are called, but it needs to be consistent in this specific instance with the qualification standards, and they will be based on the AQF. There is no question that there is a degree of tension here between the framework that is now going to be established as the qualification standards and—

Senator MASON—University autonomy.

Mr Hazlehurst—That is, of course, why there has been a lengthy and intense process of consultation and engagement around the settling of the AQF itself.

Senator MASON—This will sound like a rather basic question, but when you speak to academics, whether they are in universities or higher education providers, a lot of them will say, ‘What do public servants know about accrediting courses?’ I am sure all of you have heard this concern expressed. They will say, ‘I am a private higher education provider; therefore I need to seek accreditation. If I want to run a course on philosophy, what would a public servant know about Greek philosophy? Why should I have to go and ask a public servant in Melbourne about seeking accreditation for a course on Greek philosophy?’ Do you see the point? I get that wherever I go. How do you answer that, Mr Hawke? Do you know much about Plato and Aristotle?

Mr Hawke—The short answer is that considerations of the merits of any proposal in any discipline need to be judged at the appropriate level by peers and experts in that discipline. That is a principle that is driving the regulatory processes conducted by states and territories now. It is a principle that drives the operations of AUQA in the conduct of their audit activity where they appoint panels of experts to do that work.

TEQSA will devise its own model for that, but it will be a model almost certainly that embraces a peer review process associated with evaluating the specific merits of a particular new course or proposal presented to it by a provider. It will not be the public servants that are offering an inexperienced view of those things; it will be the agency looking for expert advice in considering the merits of any particular case put before it.

Senator MASON—You could not have public servants or, indeed, even academics per se covering the entire field of academic endeavour on some board. That would be impossible. That just would not be practical. What you are saying is that you would bring in experts where required for peer review of any course?

Mr Hawke—Yes.

CHAIR—Let us assume that the bill is passed. When does TEQSA actually come formally into being?

Mr Hawke—The legislative package provides for TEQSA to be able to operate one month after assent of the legislation is given. It is the view of both Denise Bradley and me that we will be able to achieve the transition of AUQA, its staff and functions, into TEQSA with that timeframe in mind and enable AUQA to operate as a quality assurance agency under the TEQSA banner from that point on. What is currently undertaken by the Australian University Quality Agency, the work which in the sector is known as cycle 2 audits, particularly at the core of their current work, would continue uninterrupted but they would become TEQSA audits from the point at which the operational starting point kicked off.

The package then stipulates that six months beyond that date is the date on which the regulatory switch for TEQSA goes on, and at the same time, the regulatory switch for states and territories goes off. The agency has that six-month window to prepare itself formally to become the regulator and to conduct a transition negotiation with each state and territory over what we hope will be the passing across of copies of files that document the historical record of registered providers. It also articulates the processes that TEQSA as the new regulator would adopt in rolling out its processes, functions and responsibilities. From the point six months after the quality assurance aspects of the agency are up and running, the regulatory switch goes on and it is ready to regulate.

CHAIR—We will not see you at the budget estimates, but we will see you at the supplementary estimates in November?

Mr Hawke—My appointment will terminate, and Professor Bradley’s similarly will terminate at the point at which the government makes appointments of commissioners, and they take over the operation of the agency at that point.

Senator MASON—So back to Brisbane, Mr Hawke?

Mr Hawke—I did say I was going back to the Queensland government. There will obviously be some sort of need for a transition, and that is entirely a matter for the commissioners to determine how much of that they need, whether they need two hours, two days or two weeks.

CHAIR—Mr Hazlehurst, how does TEQSA appear before this committee at estimates if it has commissioners as opposed to a CEO?

Mr Hazlehurst—In the same way that other statutory bodies appear. I imagine it would be when the DEEWR portfolio appears at estimates; it would be one of the other bodies that can be asked by the committee to appear.

CHAIR—We look forward to that.

Mr Hawke—The Chief Commissioner is the CEO of the agency.

CHAIR—Okay. That makes sense.

Mr Hazlehurst—If I may, there were just a couple of other very brief technical matters that Ms Schofield might mention just for the benefit of the committee based on things that have happened already.

CHAIR—Yes, thank you.

Ms Schofield—I think there was a question about the Australian College of Theology and a five-year period. I have gone back and had a look at the submission from the Australian College of Theology and I could not find the five-year reference.

Senator MASON—I probably misread it, Ms Schofield.

Ms Schofield—The only thing it could possibly be linked to is some of the new wording that has gone into the draft of the standard that was released last week but which is still subject to consultation. We will certainly make sure that we talk to all of the providers over the next few weeks to make sure that that is okay.

Senator MASON—Could you do that? Thank you.

CHAIR—If that completes it, Mr Hawke, Mr Hazlehurst and Ms Schofield, thank you for your contribution to the inquiry. It has been very useful. I think you have greatly assisted the committee, so thank you for that. We will now adjourn these proceedings.

Committee adjourned at 2.51 pm