

CHAPTER 1

Introduction

Reference

1.1 On 6 March 2014, the Senate referred the Tertiary Education Quality and Standards Agency Amendment Bill 2014 (Bill) to the Education and Employment Legislation Committee (committee) for inquiry and report by 16 June 2014.¹

Background

1.2 In 2008 the Rudd Government initiated a wide-ranging review of the higher education sector in Australia, led by Professor Denise Bradley AC. The review recommended the Government adopt a framework for higher education accreditation, quality assurance and regulation through the establishment of a 'national regulatory body'.²

1.3 In 2009 the Government announced the establishment of the Tertiary Education Quality and Standards Agency (TEQSA). It was envisaged that the new agency would regulate university and non-university higher education providers against a set of national standards, known as the Higher Education Standards Framework. These would comprise threshold standards (provider and qualification standards) and other (or non-threshold) standards (teaching, learning, research and information standards).³

1.4 Legislation providing for the establishment of TEQSA, the *Tertiary Education Quality and Standards Agency Act 2011* and the *Tertiary Education Quality and Standards Agency (Consequential Amendments and Transitional Provisions) Act 2011*, was passed by the Parliament on 22 June 2011. TEQSA commenced operations on 29 July 2011, assuming its full regulatory powers on 29 January 2012.

1.5 On 29 May 2013 the Gillard Government announced that in response to concerns from universities about the cost of regulatory compliance and reporting, it

1 *Journals of the Senate*, No. 18 – 6 March 2014, pp 576–7.

2 Recommendations 19 and 20, Professor Denise Bradley AC, et al, *Review of Australian Higher Education: Final Report*, December 2008.

3 The Hon. Julia Gillard, MP, Minister for Education, Employment and Workplace Relations, 'Budget 2009–10: New agency to set quality benchmarks in higher education', Media release, 12 May 2009; Revised Explanatory Memorandum, Tertiary Education Quality and Standards Agency Bill 2011, p. 3.

had established an independent Review of Higher Education Regulation (Review), to be conducted by Professors Kwong Lee Dow AO and Valerie Braithwaite.⁴

1.6 The Review assessed TEQSA's regulatory approach against its three regulatory principles:

- regulatory necessity (exercise of its powers does not burden the provider any more than is reasonably necessary);
- reflecting risk (taking into account the provider's history, internal quality assurance mechanisms, financial status and capacity); and
- proportionate regulation (powers are exercised in proportion to any non-compliance, or risk of future non-compliance, by providers).⁵

1.7 The Review found that:

The dominant perception in the sector is that the TEQSA Act is not being interpreted in line with its basic principles of necessity, risk and proportionate regulation...Rather a 'one-size fits all' approach is being applied across the higher education sector, irrespective of an institution's characteristics, history or risk.⁶

1.8 The administrative burden imposed upon providers in complying with TEQSA's reporting requirements and quality assessment functions was found to be the focus of particular criticism from the higher education sector.⁷

1.9 TEQSA Commissioners also reported to the Review that the TEQSA Act 'significantly restricts their capacity to delegate their powers and functions', creating inefficiencies in decision-making.⁸

1.10 The Review concluded that while having a national body such as TEQSA responsible for compliance and monitoring is 'crucial to maintaining the quality of Australia's higher education sector', aspects of quality assurance and best practice were 'better identified and delivered through other means'.⁹ It was further suggested

4 The Hon. Craig Emerson, MP, Minister for Tertiary Education, Skills, Science and Research, and the Hon. Sharon Bird, MP, Minister for Higher Education and Skills, 'Reduced red tape burden for universities', Media release, 29 May 2013.

5 Kwong Lee Dow and Valerie Braithwaite, *Review of Higher Education Regulation: Report*, 2013, pp 62, 42; *Tertiary Education Quality and Standards Agency Act 2011*, s. 13–16.

6 Kwong Lee Dow and Valerie Braithwaite, *Review of Higher Education Regulation: Report*, 2013, p. 43.

7 Kwong Lee Dow and Valerie Braithwaite, *Review of Higher Education Regulation: Report*, 2013, pp 36, 47.

8 Kwong Lee Dow and Valerie Braithwaite, *Review of Higher Education Regulation: Report*, 2013, pp 33–4.

9 Kwong Lee Dow and Valerie Braithwaite, *Review of Higher Education Regulation: Report*, 2013, pp 1–2.

that 'institutions are often best placed and should be largely responsible for assuring the quality of their educational provision'.¹⁰

1.11 A specific recommendation of the Review was that the Government should:

reduce TEQSA's functions to focus on its core activities as a regulator; to reduce the number of Commissioners over time and revise their roles and responsibilities to allow greater decision-making responsibilities to be assigned to case managers or other TEQSA staff as appropriate.¹¹

1.12 The Minister for Education announced his intention to implement the recommendations from the Review in October 2013.¹²

Purpose and key provisions of the Bill

1.13 The Tertiary Education Quality and Standards Agency Amendment Bill 2014 seeks to amend the *Tertiary Education Quality and Standards Agency Act 2011* (TEQSA Act) to give effect to the Government's decision to implement recommendations arising from the Review.¹³

1.14 The Bill, which comprises eight parts, aims to increase the efficiency of TEQSA and reduce the burden on higher education institutions.¹⁴

1.15 Part 1 of the Bill removes references to TEQSA's quality assessment activities which allowed it to conduct sector-wide thematic reviews of institutions or courses of study, while retaining its provider registration and course accreditation functions.

1.16 Part 2 seeks to reduce administrative backlogs in TEQSA by allowing functions and powers formerly undertaken by Commissioners to be delegated to appropriate level TEQSA staff. It also enables applicants seeking to appeal a TEQSA decision access to the agency's internal review mechanisms.

1.17 The ability of TEQSA to extend the period of registration for higher education providers and course accreditation is covered in Part 3. The extended period may exceed seven years.

10 Kwong Lee Dow and Valerie Braithwaite, *Review of Higher Education Regulation: Report*, 2013, p. 48.

11 Recommendation 1, Kwong Lee Dow and Valerie Braithwaite, *Review of Higher Education Regulation: Report*, 2013.

12 The Hon. Christopher Pyne, MP, Minister for Education, 'Government to reduce red tape in higher education', Media release, 23 October 2013.

13 Explanatory Memorandum, Tertiary Education Quality and Standards Agency Bill 2013, p. 1.

14 The Hon. Christopher Pyne, MP, Minister for Education, Tertiary Education Quality and Standards Agency Amendment Bill second reading speech, *House of Representatives Hansard*, 27 February 2014, p. 1080.

1.18 Provisions relating to the appointment of Commissioners outlined in Part 4 give the minister the flexibility to reduce the number of Commissioners, in addition to the Chief Commissioner, from the current number of four. Additional provisions remove the requirement to appoint a specific number of part-time and full-time Commissioners.¹⁵

1.19 The TEQSA Act provides that the Chief Commissioner is also the Chief Executive Officer. Part 5 separates these two roles and outlines provisions relating to the appointment and terms of employment of the Chief Executive Officer.

1.20 Part 6 details requirements which would apply to TEQSA when notifying higher education providers of decisions, specifying in particular whether the provider need be informed of the reasons for decisions.

1.21 Under section 136 of the TEQSA Act, the Minister may, by legislative instrument, give a direction to TEQSA if the minister considers that the direction is 'necessary to protect the integrity of the higher education sector'. Part 7 of the Bill seeks to amend this section to allow the minister to give TEQSA directions of a general nature 'in relation to the performance of its functions and the exercise of its powers'.¹⁶

1.22 Part 8 seeks to amend section 158 of the TEQSA Act to specify that TEQSA may not make a legislative instrument relating to the payment of fees without written approval from the minister.

Conduct of the inquiry

1.23 The committee advertised the inquiry in *The Australian* on 19 March 2014. Details of the inquiry, including a link to the Bill and associated documents, were placed on the committee's website at http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Education_and_Employment. The committee also wrote to 130 organisations, inviting submissions by 2 May 2014. Submissions continued to be accepted up to two weeks after that date.

1.24 The committee received 20 submissions, which are listed in Appendix 1 and published on the committee's website.

1.25 A public inquiry was held on 6 June 2014. The list of witnesses for the hearing is at Appendix 2.

Acknowledgements

1.26 The committee thanks those organisations and individuals who contributed to this inquiry by preparing written submissions and giving evidence at the hearing.

15 Explanatory Memorandum, Tertiary Education Quality and Standards Agency Bill 2013, p. 13.

16 Explanatory Memorandum, Tertiary Education Quality and Standards Agency Bill 2013, p. 22.