

## Universities Australia Submission to the Review of the impact of the TEQSA Act on the higher education sector

14 November, 2016

Universities Australia (UA) is pleased to make this submission to the review of the impact of the *Tertiary Education Quality and Standards Agency Act 2011* ('TEQSA Act') on the higher education sector ('the Review').

We would be happy to provide any further information that may be relevant to the Review, or to answer any questions you may have.

UA strongly supports a national regulatory framework for higher education. As discussed below, UA believes that the regulatory framework set up by the *TEQSA Act* has improved regulation and quality in the higher education sector. The new framework is clearer and more straightforward than what preceded it, and has closed regulatory loopholes that sometimes caused problems in the past.

In particular, the national regulatory framework has resolved issues that arose under the previous regime in the regulation of international higher education. Effective regulation is vital to maintaining Australia's reputation for quality and sustaining our \$19 billion international education market.

Robust regulation against minimum standards protects the reputation of the entire sector, to the benefit of all providers. The national TEQSA regulatory framework has been highly effective in preventing reputational damage to the whole sector from the conduct of one or two unethical providers, as was more likely under the previous regime due to regulatory loopholes.

Higher education regulation is a complex area. While the system must evolve to deal with change in what is a competitive and fast-moving sector, UA urges caution in any change. Alterations to the Act would have to be carefully thought through and implemented to maintain consistency and avoid unnecessary increases in the compliance burden for universities.

We address each of the Review's terms of reference below.

## Issue No. 1

### **What has changed for the sector in moving to a single national regulatory framework from multiple state- and territory-specific arrangements?**

UA strongly supports a national regulatory framework for higher education. Higher education is a national sector that has become primarily a Commonwealth responsibility. Funding is sourced from the Commonwealth. Policy is made by the Commonwealth Government and programs in higher education and research are set up and run by Commonwealth departments. It is therefore appropriate and sensible that regulation should be set up and should operate at a national level.

Establishing a national regulatory framework has made university regulation clearer and more prominent. It is easier for universities and other stakeholders to understand regulatory requirements. Processes for developing and setting regulatory requirements are clearer and easier to understand. The new national framework has driven and supported the development of more up-to-date and fit-for-purpose standards for higher education providers.

A national regulatory framework reduces the compliance burden on higher education providers. Complying with a single set of national requirements is more straightforward than having to duplicate administrative procedures across jurisdictions, and sometimes to meet slightly different evidentiary and legal requirements.

Importantly, the national regulatory framework has closed some loopholes that existed when higher education regulation was the responsibility of States and Territories. There is now no issue of differing requirements or processes between jurisdictions, so there is no possibility that differing levels of rigour can accidentally arise. This removes any possibility that a provider could seek registration in a jurisdiction with easier requirements, with attendant risk for the reputation of the Australian higher education sector as a whole.

National consistency in regulatory requirements is particularly important in international education. For a start, a national regulator sends a positive and unambiguous message to the international market. By setting up a national regulator, Australia has shown its commitment at a national level to protecting quality. Taking decisive action to close regulatory loopholes made a powerful contribution to quality, and sent a clear message that Australia is committed to effective action to deal with unethical practices in international education recruitment and delivery.

## Issue No. 2

### **To what extent has the TEQSA Act contributed to improved quality in the delivery of higher education?**

Improvements in the clarity and effectiveness of higher education regulation discussed above have supported improved quality in the sector.

Universities are self-accrediting institutions that have primary responsibility for the quality of their educational offerings. Every university has a strong and effective culture of internal quality assurance and self-regulation. Universities operate in a highly competitive environment and competitive pressures – in both the domestic and international markets – provide a strong incentive to maximise quality. Market competition drives universities to focus on their strengths, supporting innovation and diversity in the Australian higher education sector.

UA supports TEQSA's approach, based on a culture of externally validated quality assurance by universities themselves. This approach promotes not only quality but also diversity and innovation.

Any moves away from this system would tend to encourage uniformity across the sector. If TEQSA took a more interventionist role in quality assurance, its advice on quality improvement would tend, over time, to be reflected in regulated requirements, with the result that the sector would become increasingly homogeneous. This would be a negative and unhelpful trend. By reducing the impact of competitive pressure, the net impact could weaken quality improvement across the sector.

UA welcomes the Review's question about the appropriateness of thematic quality assessments conducted under s.60 of the Act, and about who should be responsible for any such reviews. UA believes that the powers and functions set out in s.60 are appropriate and necessary. We note that thematic assessments – like all of TEQSA's other activities – are subject to the principles of necessity, risk and proportionality that are set out in the Act.

Well designed and effective quality assessments and thematic reviews rely on consultation with the sector and careful planning. TEQSA should communicate clearly to the sector the objectives, timing and methodology of any assessments and reviews.

TEQSA could play a constructive role in quality improvement through a well-designed approach to thematic reviews which would seek ideas and active participation from universities. A heavy-handed, unduly uniform, top-down approach to thematic reviews caused problems in past years for both universities and TEQSA. A bottom-up approach to identifying themes, issues, methods and solutions is likely to be more useful for everyone involved, and to lead to practical options to improve the quality of higher education.

With regard to which agency is responsible for quality assessments, UA believes that TEQSA should retain responsibility. This is not an appropriate role for HESP. This function should remain with the regulator rather than returning the Department, so that quality assessments are conducted at arm's length from Government. It would not be appropriate for the Department to undertake assessments of this kind.

A clear delineation of different, but complementary responsibilities for different agencies, is critical to the strength and effectiveness of the regulatory framework.

### Issue No. 3

#### **To what extent has the TEQSA Act contributed to improved regulation?**

UA believes that the TEQSA Act has contributed to improved regulation in the higher education sector. The basic principles set out in the Act (risk-based regulation, proportionality and necessity) provide a strong basis for a regulatory regime that effectively leverages the self-regulation practised by universities and directs regulatory efforts to where they are needed most.

While the transition to a new national regulatory framework necessarily included adjustment on the part of both providers and Government to new requirements and approaches, the TEQSA regulatory regime has evolved into a system that is less burdensome to providers in important respects than the system it replaced.

In particular, provider re-registration – though a new process for universities – is easier and more straightforward than the previous process of audits by the Australian Universities Quality Agency (AUQA). This has reduced compliance costs, both in cash and in kind (staff time, documentation etc).

### Issue No. 4

#### **Is there unnecessary overlap with other legislation?**

Overlap between the requirements of the *TEQSA Act* and other regulatory requirements on higher education providers (particularly the *Education Services for Overseas Students Act 2000*) has been a problem. The Review of Higher Education Regulation undertaken in 2013 identified this as a significant issue.

Following the 2013 Review, Governments of both political parties have made significant efforts to reduce unnecessary burdens on providers, and to align the requirements and timing of reporting and compliance under the *TEQSA Act* and other legislation that higher education providers must comply with.

For example, registration under the *TEQSA Act* and the *ESOS Act* have been streamlined and aligned, in terms of processes, requirements, and period of registration. This has made compliance easier for universities and reduced administrative burden.

UA supports the Government's initiatives in this respect. The process of calibration and alignment has been effective in reducing overlap and unnecessary burdens on providers.

Nevertheless, there is still significant overlap and duplication between the *TEQSA Act* and the *ESOS Act*, in particular:

- Duplication in content and requirements of the new *Higher Education Standards* and the *ESOS National Code*
- Duplication in reporting of courses (to DET for domestic regulatory purposes and to TEQSA for CRICOS purposes)
- Overlap in compliance processes, such as separate audits related to domestic and international provision
- Separate re-registration processes under each of the TEQSA and ESOS Acts.

UA supports TEQSA's continuing efforts to align reaccreditation under both regimes. However, we believe that more could be done to realise a principle discussed following the 2013 Review, namely that successful compliance with domestic regulatory criteria should generally count towards compliance against regulatory requirements in international education. Any other approach will inevitably create overlap and duplication.

## Issue No. 5

### **Are there amendments to the TEQSA Act or other changes that would enhance the Act's impact or its administration?**

UA welcomes the opportunity to suggest amendments to the TEQSA Act, or other changes that would improve the operation of the Act.

However, UA does not wish to suggest any specific amendments to the TEQSA Act. We consider that TEQSA is currently carrying out its functions well, in line with the principles enshrined in the Act.

As a general consideration, UA argues that any changes to the Act should be carefully thought through in order to avoid unintended consequences and to preserve consistency in regulation.

## Issue No. 6

### **Are the required functions of the Higher Education Standards Panel adequately reflected in the TEQSA Act?**

UA considers that the TEQSA Act sets out the functions and powers of the Higher Education Standards Panel (HESP) well.

HESP's functions are properly specified as advising the Minister and TEQSA on matters related to the Higher Education Standards Framework. UA does not consider it necessary to modify these functions or to add new ones.

As a matter of principle, it is important to ensure a separation of functions between the body responsible for formulating Standards and the regulator that is tasked with regulating against these standards. UA considers that the current legislative architecture establishes and protects this separation well.

Yours sincerely



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**Deputy Chief Executive**