UNIVERSITIES AUSTRALIA

Luke Sheehy
Chief Executive Officer

6 November 2026

The Hon Jason Clare MP
Minister for Education

Dear Minister Clare Jason

I write on behalf of Universities Australia (UA) to set out the sector's response to the proposed amendments to the *Tertiary Education Quality and Standards Agency Act 2011* (TEQSA Act). We provide this feedback without seeing a formal exposure draft.

Universities are accountable for the quality of the education they provide and the safety of their students. UA supports a strong, effective and independent regulator that acts decisively on genuine risks. We would welcome further consideration of whether the scope of the proposed amendments is necessary and proportionate to achieving these shared objectives.

UA has serious concerns about the direction and cumulative impact of the proposed amendments. While some changes build on reforms UA has previously supported, others represent a fundamental expansion of TEQSA's powers that risk shifting the regulator from quality assurance to micromanagement of how universities operate. This would undermine institutional autonomy, increase regulatory costs and blur the important distinction between regulation and institutional governance. Institutional autonomy is not a privilege of institutions; it is the structural condition that makes academic freedom and freedom of speech possible in practice.

Our principal concerns relate to the proposed powers to issue binding directions on how universities meet the Threshold Standards, the expansion of information-gathering and enforcement powers, and the absence of meaningful measures to offset the additional regulatory and financial burden on universities.

Given the significance of these changes, UA's strong preference is for the Government to release the Bill through a traditional exposure draft process – acknowledging the briefings from the Department for the sector this week. A traditional exposure draft process would give the sector adequate time to scrutinise the proposed powers, test their necessity and ensure appropriate safeguards are in place. If the Government proceeds with only this short period for feedback, we urge that the Bill be amended to address the concerns outlined below before it is introduced at the end of this parliamentary sitting year. In particular, we strongly recommend the deletion of the power to give general directions and for a much narrower information gathering power.

As outlined in UA's November 2025 response to the consultation paper on Modernising and Strengthening TEQSA's Powers, any expansion of TEQSA's powers must remain grounded in regulatory necessity, risk and proportionality. We are concerned that several proposals do not adequately meet these tests or demonstrate why existing regulatory powers are insufficient.

Our feedback on the key proposed amendments is outlined below.

Putting students at the centre

- UA shares the Government's commitment to student-centred regulation. Students must be able to rely on a regulator that identifies and acts decisively on genuine risks to the quality of their education, their wellbeing and their safety. UA supports the explicit recognition of



Aboriginal and Torres Strait Islander students in the matters TEQSA must consider, consistent with the Australian Universities Accord's commitment to placing First Nations people at the heart of the higher education system.

- Changes to the matters TEQSA considers when applying its regulatory principles must clarify how impacts on students are determined and balanced against other statutory obligations. Protecting student interests and the sector's reputation must not dilute the principles of necessity, risk and proportionality that govern TEQSA's use of its powers.
- The amendments would add the impact on students and on the sector's reputation to the matters TEQSA must weigh under sections 15 and 16, but academic freedom, freedom of speech, institutional autonomy and the diversity of providers remain absent. UA recommends that sections 15 and 16 be amended to require TEQSA to consider these matters. 'Reputation' is an inherently variable consideration that responds to media and political attention rather than to the quality of education. It should be removed, or replaced with the quality and integrity of Australian higher education.
- The Threshold Standards already cover student participation, attainment, wellbeing, safety and complaints. These existing provisions provide an appropriate basis for student-centred regulation without unnecessarily expanding regulatory intervention.

Direction powers undermine institutional autonomy and the intent of the Threshold Standards

- UA strongly opposes the proposed expansion of TEQSA's powers to direct how providers comply with the Threshold Standards. These powers are disproportionate and fundamentally inconsistent with the principles underpinning university autonomy and Australia's existing higher education regulatory framework. TEQSA's role is to assure quality against the Threshold Standards, not to prescribe how universities must meet them. Extending its powers in this way would be regulatory overreach.
- Under Standard 6.1.1, university governing bodies are responsible for governance oversight, institutional operations and continued compliance with the Threshold Standards. Empowering TEQSA to prescribe how these responsibilities are discharged risks displacing the very governance and accountability arrangements the Standards require.
- There is a fundamental distinction between regulating institutional compliance and directing institutional decisions. The proposed powers risk crossing that boundary, constraining universities' autonomy and potentially undermining the independence necessary for free intellectual and academic inquiry. Prescriptive directions would also push universities towards uniform approaches, eroding the institutional diversity that is a strength of Australia's higher education system.
- Parliament has already recognised the link between institutional autonomy and academic freedom. The statutory definition of academic freedom inserted into the Higher Education Support Act 2003 in 2021 includes the autonomy of the provider over its choice of courses, how they are taught, and its choice and conduct of research. The Model Code arising from the 2019 French Review affirms the importance of the university's institutional autonomy under law in the regulation of its affairs, and the 2017 statutory review of the TEQSA Act found the sector regarded the principles of necessity, risk and proportionality as key to ensuring regulation did not unreasonably encroach on institutional autonomy and academic freedom. The proposed powers depart from that settled position.
- UA's concern is not with TEQSA's present intentions but with the power the amendments would create. Regulatory powers must be designed for how they could be used by future holders under pressure, not only for how current holders intend to use them. In ordinary times these powers would likely be used sparingly. The risk is greatest in periods of intense political controversy, or under a future government more willing to bend institutions to its purposes.



Those are precisely the moments when universities most need to function as places of contested inquiry, dissent and free expression.

- In ordinary times the risk is arbitrariness. Because the Australian system is built on institutional autonomy and principles-based standards, there is no established practice of directive regulation in higher education. When direction powers are used only occasionally, each use lacks the precedent, published criteria and consistent thresholds that make regulatory action predictable. Providers cannot know in advance when a matter will attract a direction, and like cases may not be treated alike.
- The consultation paper justifies the new powers by alignment with the powers of the Australian Skills Quality Authority (ASQA) under the National Vocational Education and Training Regulator Act 2011 (NVETR Act). That analogy does not transfer cleanly. ASQA regulates several thousand registered training organisations through a high-volume compliance practice in which directions to rectify are routine and well calibrated, and vocational providers do not carry the statutory responsibility to uphold academic freedom and freedom of speech that universities do. Importing the vocational enforcement model without its established practice, and without regard to that responsibility, risks occasional and therefore unpredictable intervention in matters at the heart of universities' civic role.
- In addition, during the brief consultation period, providers who are subject to both TEQSA and AQSA reported serious problems with how the powers under the NVETR Act were used and their impact on the sector. While there is no cogent reason for alignment, if alignment is the aim it can also be achieved by taking these powers out of the NVETR Act. This would be consistent with the government's de-regulatory agenda.
- Experience elsewhere shows how such powers behave under political pressure. In 2025 the United States administration froze federal research funding to Harvard University while demanding changes to its governance, admissions and hiring, and a federal court found the freeze unlawful in September 2025. In 2020 the Court of Justice of the European Union found that Hungary's legislation targeting the Central European University breached academic freedom, but only after the university had relocated to Vienna. In April 2026 the High Court of England and Wales quashed the Office for Students' £585,000 fine on the University of Sussex, finding errors of law and predetermination. In each case review came late and at great cost.
- Many Australian universities are established and governed under state and territory legislation. The proposed powers therefore also raise important questions about the relationship between Commonwealth regulation and the legislative responsibilities of states and territories. These implications require further consideration and consultation with affected jurisdictions. For private providers, the powers represent a potentially significant intrusion into legitimate institutional and business decisions.

TEQSA power to give general directions

- UA's strongest concern is the proposed power for TEQSA to issue legally enforceable general directions specifying how providers must comply with the Threshold Standards. This represents a profound and unjustified restriction on institutional autonomy. The Threshold Standards establish minimum acceptable requirements while preserving the responsibility of governing bodies to determine how those requirements are met. General directions would bypass those governance functions, allowing TEQSA to prescribe institutional approaches rather than assess compliance with established standards.
- New regulatory requirements are currently established through amendments to the Threshold Standards, which are subject to parliamentary scrutiny and disallowance. The proposed general directions power risks circumventing that process, effectively enabling TEQSA to introduce additional binding requirements without equivalent parliamentary oversight.



- The Standards on which general directions would operate include Standard 6.1.4, which requires governing bodies to uphold and protect freedom of speech and academic freedom. A general direction on how to comply with that Standard, or with the racism and safety standards that interact with it, could prescribe how universities across the sector regulate speech, protest and invited speakers. Non-enforceable Statements of Regulatory Expectations, such as those on definitions of antisemitism and Islamophobia, could become enforceable general directions with which compliance is a condition of registration.
- The design of the amendments links the trigger for intervention to political salience. The consultation paper names university governance, racism on campus and student safety as examples of systemic risk; TEQSA's 2025 submission to the Senate inquiry into university governance identified safety risks associated with campus protest activity as a systemic risk; and the amended regulatory principles would require TEQSA to weigh the sector's reputation, a consideration that moves with media and political attention. The power is therefore most likely to be activated on the contested questions where universities most need to remain free.
- The safeguards proposed are insufficient. Directions 'of a general nature only' limit who a direction applies to, not what it may require, and a duty to consult does not provide parliamentary accountability. The paper does not state whether general directions would be legislative instruments subject to disallowance, as ministerial directions to TEQSA under section 136 already are, and it provides for no sunset, no reporting to Parliament and no review.
- The proposal also assumes TEQSA has the expertise, resources and institutional understanding necessary to determine how universities should respond to a broad range of governance, management and emerging policy challenges. The consultation paper does not adequately explain how TEQSA would exercise this responsibility or manage the substantial risks associated with doing so.
- UA strongly recommends that the proposed general directions power be removed from the amendments. The Government has not demonstrated why existing regulatory mechanisms, including the Threshold Standards, guidance and Statements of Regulatory Expectations, are insufficient to achieve its objectives. If the Government nonetheless proceeds, general directions should be made as legislative instruments subject to disallowance, should sunset after three years unless remade, should be reported annually to Parliament with TEQSA's reasons and the outcomes of consultation, and should not extend to the content of teaching or research, to lawful expression, or to prescribing a single definition or form of words that providers must adopt.

TEQSA power to direct on breaches of the Threshold Standards

- The proposed power for TEQSA to direct providers to take corrective action following breaches of the Threshold Standards lacks sufficient clarity about the circumstances in which directions may be issued and the limits on what TEQSA can require. Without clear legislative parameters, this power risks allowing TEQSA to prescribe institutional responses beyond what is necessary to rectify an identified breach. Any direction must be directly connected to the relevant Threshold Standard and consistent with the principles of necessity, risk and proportionality.
- The proposed power also removes the intermediate step that currently gives the system its discipline. Where TEQSA has concerns between registrations, it must first impose a specific condition on registration, which is reviewable on its merits by the Administrative Review Tribunal, and only a breach of that condition opens the way to penalties. The consultation paper describes this step as hampering timely action. It is also the mechanism that converts a general, principles-based standard into a specific, contestable requirement before sanctions can follow. Because the Threshold Standards are principles-based, whether a provider is in



breach is often a matter of evaluative judgement. Under the amendment that judgement would be TEQSA's alone.

- The consultation paper is silent on merits review. Section 183 of the TEQSA Act lists the decisions reviewable by the Administrative Review Tribunal, and a new direction would be reviewable only if the Bill adds it. By contrast, ASQA's equivalent power under section 35A of the NVETR Act is a reviewable decision under section 199 of that Act. If alignment with ASQA is the rationale, its safeguards should be adopted too. UA recommends that directions to rectify be added to the reviewable decisions in section 183; that a direction issue only where TEQSA is satisfied, after written notice and a reasonable opportunity to respond, that a provider has materially breached a condition of registration; and that TEQSA publish the criteria it will apply in issuing directions and maintain a public register of all directions given, so that a consistent and predictable practice develops.
- UA recommends that, except where an immediate and serious risk requires urgent action, a written direction under Part 7, Division 1, should precede any penalty under section 113. Providers must be given reasonable time and opportunity to respond, dispute a finding or rectify non-compliance before financial penalties are imposed.
- These safeguards are essential to ensuring that expanded enforcement powers are exercised fairly and do not penalise providers without an appropriate opportunity to address alleged breaches.

Continuous compliance

- UA acknowledges the Government's desire to provide TEQSA with more proportionate and responsive tools to address non-compliance. This should be pursued as an opportunity to improve existing regulatory processes, rather than simply add to universities' compliance obligations.
- Universities are already required under Standard 6.2.1 to assure themselves of ongoing compliance with the Threshold Standards. This is a responsibility they take seriously and one that TEQSA regularly assesses through re-registration.
- If continuous compliance with the Threshold Standards becomes an explicit condition of registration under Part 3, Division 2, then the re-registration process should be correspondingly simplified. TEQSA's capacity to monitor compliance and gather information throughout the registration period should reduce, not duplicate, the requirements imposed at re-registration.
- Such an approach would better reflect TEQSA's regulatory principles of necessity, risk and proportionality, while retaining its ability to respond to genuine risks.
- UA also recommends that the legislation clearly establish how non-compliance is determined and communicated and provide accessible processes for providers to challenge findings where they consider that they have met the Threshold Standards.

Systemic risks and information gathering

- UA recognises the importance of identifying and responding to systemic risks across higher education. However, we question the additional regulatory benefit of expanding section 60 when TEQSA already has powers to assess the quality of higher education across one or more providers. Of particular concern is the proposed expansion of information-gathering powers, which would enable TEQSA to compel information across a substantially broader range of matters than is currently permitted.
- The suggestion that TEQSA could use this power to investigate matters that "could become" systemic risks is especially concerning. Without clear limits, this creates scope for extensive and potentially speculative regulatory intervention, imposing significant burdens on institutions without an established compliance concern.



- The consultation paper does not define systemic risk. Thematic assessments would extend to any matter relevant to the Threshold Standards, the integrity of higher education and student experience, with notice to the Minister and the Australian Tertiary Education Commission halved from 60 to 30 days. Without a statutory definition, the function could reach any matter of public controversy affecting more than one provider. The requirement that TEQSA observe its basic regulatory principles in exercising the function is welcome, but those principles govern the intensity of regulation, not the matters it may reach. UA recommends that the Act define systemic risk as a material, demonstrable risk of non-compliance with the Threshold Standards across multiple providers, and that terms of reference for thematic assessments be published when notice is given.
- UA has deep concerns about how these powers would operate in practice, particularly where they extend to individuals. The amendment to subsection 63(1)(b) would allow TEQSA to require any person to give information relevant to the administration or enforcement of the Act, while the penalty for failing to comply with a requirement to give information would increase fivefold. Compelling staff to provide information or account for institutional decisions would shift TEQSA towards an investigative model more akin to an integrity commission than a quality assurance regulator. Individuals may need to seek independent legal advice, and the powers may intersect with obligations under enterprise agreements and other State and federal laws (particularly those relevant to privacy). This approach must be reconsidered as a matter of principle.
- UA recommends that the proposed information-gathering powers be substantially narrowed or removed. Any expansion must be tied to clearly defined regulatory purposes, demonstrable risks and appropriate safeguards against disproportionate or unnecessary information requests.

Regulatory burden and the Bill

- The consultation paper identifies reducing regulatory burden as an objective. Yet the proposed amendments offer no meaningful regulatory relief for universities, while introducing substantial new compliance, reporting and enforcement obligations. The proposed removal of course re-accreditation requirements solely benefit non-self-accrediting providers and does nothing to offset the additional burden these reforms would impose on universities.
- This stands in stark contrast to the Government's broader work through the Better Regulation Working Group to reduce unnecessary regulation and support productivity growth. The proposed amendments risk achieving the opposite, requiring universities to divert further resources towards regulatory compliance rather than teaching, learning and research.
- Universities have absorbed significant recent regulatory change, with overlapping and interdependent requirements, compressed timeframes and limited consideration of how these reforms interact. The result has been a scramble to comply rather than a cohesive regulatory framework. Before adding further obligations, the Government should pause to establish which recent reforms are working, where they overlap and where they are not achieving their intended outcomes. Additional compliance does not, of itself, improve governance.
- UA recommends that the Bill be accompanied by a comprehensive Regulatory Impact Statement that clearly identifies the costs and cumulative regulatory impacts of the proposed changes, including additional reporting, compliance, dispute resolution and enforcement costs.
- UA reiterates the above recommendation to simplify re-registration requirements. The Government should also identify meaningful opportunities to reduce duplication and streamline TEQSA's existing regulatory processes.
- UA accepts the need for penalties that provide an effective deterrent against serious non-compliance. However, the proposed quantum should be justified by an assessment of risks and



potential harm within higher education, rather than simply aligned with penalties applying in the vocational education sector. The necessity and proportionality of enabling a fivefold corporate penalty multiplier must also be clearly demonstrated. Penalties must fit the conduct concerned. The tenfold increase in the civil penalty for breach of a condition of registration under section 113, combined with TEQSA's new ability to issue infringement notices for any breach of the Threshold Standards, would expose providers to significant financial penalties for breaches that may be minor or technical.

- Infringement notices are suited to contraventions that are readily established and require little evaluative judgement; breaches of principles-based Threshold Standards are the opposite. Applying infringement notices to them would require a provider either to pay a penalty based on a contested regulatory judgement or to defend the matter in court. Infringement notices should be confined to contraventions that can be determined objectively. Substantial fines are unlikely to create higher levels of compliance as there is no evidence that breaches to date are deliberate, but they will create a further impost on an already financially stretched sector. They risk creating a vicious cycle whereby providers who are subject to substantial fines have fewer resources for compliance and therefore find themselves fined again. While increasing the level of fine is announced government policy, switching on the corporate multiplier is not and could have highly deleterious effects.
- Universities already contribute to the cost of TEQSA's operations yet have limited opportunity to scrutinise expanding regulatory activities and associated costs before budgets are determined. Under the proposed arrangements, providers may face increased charges for additional assessments alongside substantially higher penalties and compliance costs. Without corresponding reform to regulatory practices and funding arrangements, an increasing share of resources intended for teaching, learning and research will be diverted towards funding the regulator. The Government must ensure that the costs of expanding TEQSA's responsibilities are not simply passed on to universities. Strengthening regulation should be accompanied by genuine efforts to improve regulatory efficiency and minimise unnecessary expenditure.

Compliance actions register

- UA supports transparency about compliance action. Publication on the proposed compliance actions register before review rights have been exercised, however, would cause reputational harm that cannot be undone if the action is later set aside. Compliance actions should not be published until review rights are exhausted, or should be published with a notation that review is pending.

Enabling the regulator to succeed

- UA welcomes the proposed changes to TEQSA's governance arrangements, which recognise the importance of the regulator demonstrating the same high standards of governance and accountability expected of higher education providers.
- However, the proposed expansion of TEQSA's remit raises serious questions about its capacity to undertake additional functions while maintaining the effective and timely delivery of its core responsibilities, including registration, re-registration, accreditation and compliance assessments.
- The breadth of the proposed systemic risk function, thematic assessments and information-gathering powers, extending to any matter relevant to the Threshold Standards, student experience or the integrity of Australian higher education, also risks drawing TEQSA into areas such as research security, workplace compliance and cybersecurity. These are already overseen by other regulators and agencies with specialist expertise across government portfolios. Extending TEQSA into these areas would duplicate existing arrangements, create inconsistent expectations and blur accountability. The Act should expressly state that systemic

risks that are primarily in the domain of another federal regulator should not be subject to a system risk review by TEQSA.

- The Government must ensure TEQSA is appropriately resourced to discharge its legislated functions without further increasing the financial burden on providers. Expanded responsibilities should not come at the expense of regulatory timeliness, consistency or service quality. This is best achieved by reducing the regulatory burden on providers in areas such as re-registration rather than simply increasing resources to TEQSA.

The decisions taken now will have lasting consequences for how Australian universities are regulated. UA supports the Government's ambition to equip TEQSA to respond effectively to serious risks and protect students, but stronger powers must be balanced by appropriate safeguards, institutional autonomy and genuine reductions in unnecessary regulatory burden.

UA looks forward to continuing to work constructively with you, your Department and TEQSA as these reforms progress, with a particular focus on addressing the concerns outlined in this letter before the Bill is introduced. Our shared objective must be a regulatory framework that protects students, maintains public confidence and holds institutions accountable, while preserving the autonomy and flexibility that underpin a strong, diverse university sector.

Yours sincerely

Luke Sheehy
Chief Executive Officer, Universities Australia

Cc:

Mr Tony Cook PSM, Secretary, Department of Education

Ms Jasmina Joldić PSM, Deputy Secretary, Department of Education

Professor Kerri-Lee Krause, Chief Commissioner, Tertiary Education Quality and Standards Agency

Dr Mary Russell, Chief Executive Officer, Tertiary Education Quality and Standards Agency