

Impact of the TEQSA Act on the higher education Sector: IRU submission

The IRU considers that the *Tertiary Education Quality and Standards Agency Act 2011* has worked effectively since the 2014 amendments to the Act as the legal basis for Tertiary Education Quality and Standards Agency (TEQSA) and the Higher Education Standards Panel.

The area for improvement to legislation is to streamline the Education Services for Overseas Students (ESOS) Act and the supporting National Code to remove duplication of the Higher Education National Standards and to make registration of courses for international students an administrative listing not a distinct legal decision.

The 2014 amendments followed concerns that the initial operations of TEQSA were not consistent with the principles set out in part 2 of the Act of regulatory necessity, reflecting risk, and proportionate regulation. The amendments were in response to the Lee Dow and Braithwaite *Review of higher education regulation* which strongly argued the importance of an effective partnership among the relevant bodies - providers and quality agency – for a quality assurance system to work well in practice.

That requires a constructive tension across:

- higher education providers, notably universities, which are responsible for determining how to provide higher education to students, with a strong future focus for how higher education should be delivered to meet prospective needs;
- the Higher Education Standards, which attempt to define the key threshold requirements for good higher education without dictating in detail how it should be delivered. The Standards inevitably have a current day feel; and
- TEQSA, charged with using the Standards as the guidance marker to test whether higher education providers are living up to their responsibility, in which it should both avoid constraining new developments of value and be effective in acting where delivery is clearly not effective.

The following sections consider the six questions the Discussion Paper asks.

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

The single framework and use of single Agency to make relevant decisions has greatly improved clarity about the higher education quality framework and ensured more consistent application of it across all higher education.

The major direct change has been for non-university providers previously subject to the State based arrangements. Universities were effectively subject to the Commonwealth system already. However, universities work with other providers and rely on the reputation of the Australian system. The common system has ensured greater certainty about the other providers, strengthening the robustness and reputation of the system.

2. The extent to which the TEQSA Act has contributed to improved quality in the delivery of higher education

IRU members, through their commitment to inclusive excellence, are among the leading providers of higher education in Australia. To date, quality scrutiny by the Australian University Quality Agency

and then by TEQSA has confirmed the appropriateness of university operations including the capacity of universities to act to address any weaknesses that are found.

This provides additional confidence for public and Government about the universities while allowing them the space to renew delivery.

The full impact of the Act will only be clear once the Higher Education Standards Framework has been in place for several years. At this point the interaction of higher education providers, the new Standards and TEQSA as intended by the Act cannot be fully assessed since only the transitional standards have been in force.

The Review asks whether the TEQSA Act should authorise thematic reviews of aspects of higher education delivery. The IRU does not support having such powers in the Act.

Where the Government wishes to inquire into an issue or theme it should commission suitable people to undertake the review allowing them to request input from TEQSA. TEQSA, through its actions to register higher education providers and accredit higher education courses, will have considerable knowledge and expertise about the delivery of higher education which could inform any review.

TEQSA should not compromise its standing through seeking to judge more broadly how effective aspects of higher education are. That is, the formal role of TEQSA should remain the suitability of the provider and its courses, not their collective impact.

An example of this is the review of the transparency of university admission processes which the Higher Education Standards Panel has done for the Minister at his request. This review can be loosely associated with the Panel's role (s168 (1) (a) (ii)) but is primarily a case of using a relevant set of people to undertake a role, with TEQSA able to provide input.

The counter example is the thematic reviews which TEQSA in its first guise attempted. These proved burdensome for both the Agency and the higher education providers from which it requested input. One key problem was an inability to distinguish a request for information relevant to registration, which requires precision in response and should be delivered, from a request for information to assist a study. The latter requires information sufficiently robust for use with the capacity not to provide where information is not easily available.

3. The extent to which the TEQSA Act has contributed to improved regulation?

The value from a change to a single quality system as outlined against Point 1 above also addresses this question.

Individual universities can comment on the relative impact of a TEQSA registration as compared with an AUQA audit. The main driver in both cases appears to be how the university chooses to approach the task of preparing for the process and presenting its case.

The Act has supported creation of the Higher Education Standards Framework, which provides a significantly better guide to the base expectations of a higher education provider than the previous standards through its strong focus on the expected outcome and minimal definition of how it should be achieved.

Any competent higher education provider should be able to interpret the Standards and ensure that its practice is compatible.

It is important that TEQSA retain the Standards Framework as the point of reference for higher education providers and itself. The creation of 'guidance notes' about aspects of the Standards runs the risk of creating a secondary layer of implied standards although to date the current notes are

careful to avoid becoming 'how to' instructions (see <http://www.teqsa.gov.au/for-providers/provider-resources>).

A similar issue applies to the TEQSA risk assessment framework which is not structured against the Standards as such. It may be a useful tool to assist identifying potential problems but there is a step between TEQSA identifying a potential risk and establishing that there is indeed a problem such that the set of real problem areas is smaller than the set of at risk assessments, and not fully overlapping.

Both the guidance notes and risk assessment framework err towards avoidance of non-compliance, rather than pursuit of quality and excellence. A strength of AUQA was identifying and commending good practice, as well as offering constructive advice on areas for improvement. There is scope for TEQSA to support quality across the sector by drawing attention to issues of quality that it becomes aware of through its regulatory functions.

4. Whether there is unnecessary overlap with other legislation, for example, the Education Services for Overseas Students Act 2000, the National Vocational Education and Training Regulator Act 2011 and the Higher Education Support Act 2003?

The opportunity remains for more effective, streamlined regulation of higher education.

IRU has consistently argued that ESOS should provide a supplementary not parallel suite of regulations to HESA for higher education. Its requirements should be those relevant to international students but not Australian students.

It is useful to remember that ESOS was created before there were national standards applying to all higher education. Hence it covered many issues relevant to all students. Following the development of higher education quality arrangements that applied to the whole sector the need for ESOS to retain its comprehensive coverage was lost.

The 2015 amendments to the ESOS Act retained the parallel approach by aligning two frameworks rather than create a coherent, single system that includes specific provisions concerning international students, where needed, but not otherwise.

For example, the changes allowed TEQSA to align the (re)registration for a provider with its CRICOS approval retaining two distinct decisions but permitting them to be made at the same time.

The alignment is a step forward but the crucial question of why a distinct CRICOS approval is required remains unanswered. CRICOS ought to be an automated process that follows from a provider's registration and, where relevant, the accreditation of courses. This would remove the repetitive assessment of characteristics of the provider and those courses already considered in the general higher education registration of the provider and accrediting of courses, as set out in the TEQSA Act.

The proposed simplification of the National Code under ESOS is yet to be made public for comment. It offers a major chance to remove all the non-international student specific elements of the Code which are already and better captured through the Higher Education Standards.

The IRU recognises that ESOS covers all education sectors. To the extent that the national quality systems for those sectors is not sufficiently robust such that wide ranging ESOS protections remain needed higher education should be exempt from those elements – as already occurs for some sections of ESOS and the National Code.

An area of potential duplication is the role which some professional bodies take to accredit university courses or act to define, in legal reality or through assertion, who is able to practice. The supremacy of the Standards Framework should be clear, with potential need to ensure this through circumscribing clearly the powers of those bodies.

5. Whether there are amendments to the TEQSA Act or other changes that would enhance the Act's impact or its administration?

It remains a moot point whether universities looking to advance the provision of higher education may need technically to break or ignore aspects of the Higher Education Standards Framework to do so. A provision allowing for explicit testing of development might provide a stronger message that higher education should remain dynamic.

One area of contention is whether the Standards Framework restricts the development of new qualification options through the contrasting standing of the Australian Qualifications Framework's listed qualifications and any non AQF award offered. An area of debate is the need for exit awards after one or especially two years of a bachelor qualification.

6. Whether the required functions of the Higher Education Standards Panel are adequately reflected in the TEQSA Act?

The Panel operated well to develop the Higher Education Standards Framework. Hence the sparse provisions of the Act appear to need no addition.

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