



## ***TERTIARY EDUCATION QUALITY AND STANDARDS AGENCY BILL 2011***

### ***TERTIARY EDUCATION QUALITY AND STANDARDS AGENCY (CONSEQUENTIAL AMENDMENTS AND TRANSITIONAL PROVISIONS) BILL 2011***

## **A GUIDE TO THE EXPOSURE DRAFTS**

### **OVERVIEW**

As the higher education sector goes through a period of expansion, it is important for Australia to have a national system of regulation to assure the quality of all providers. A national approach is vital so that all students, domestic and international, can be assured of the quality of their education.

While the current quality assurance framework for higher education has served Australia well, the Review of Australian Higher Education 2008 (the 'Bradley Review') identified a need to develop a new approach to underpin both domestic and international confidence in the higher education sector. It recommended an independent national regulatory body be responsible for regulating all types of tertiary education.

The *Tertiary Education Quality and Standards Agency Bill 2011* (the Bill) establishes TEQSA and a new national regulatory and quality assurance environment for Australian higher education.

TEQSA will combine the regulatory activity currently undertaken in the states and territories with the quality assurance activities currently undertaken by the Australian Universities Quality Agency (AUQA). In so doing, it will reduce the number of federal, state and territory regulatory and quality assurance bodies from nine to one.

This public exposure process builds on the closed consultations undertaken in November and December 2010 with officials representing state and territory governments and representatives of peak stakeholder groups. The groups involved in these consultations included:

- Australian Council for Private Education and Training
- Council of Private Higher Education
- National Union of Students
- Council of Australian Postgraduate Associations
- National Tertiary Education Union
- TAFE Directors Australia, and
- Universities Australia.

Following the public exposure process, the Government will introduce the TEQSA legislation to the Parliament in the week commencing 21 March 2011 and will also refer the TEQSA legislation to the Senate Committee on Education, Employment and Workplace Relations for inquiry.

This is important legislation for the future of higher education in Australia and it is important that it be subjected to scrutiny and debate.

The key elements of the legislation are summarised below.

## OBJECTS OF THE LEGISLATION

The legislation has a number of broad objects in establishing a national approach to regulation and quality assurance in Australian higher education. These are to:

- provide for national consistency in the regulation of higher education
- regulate higher education using a standards-based framework and principles relating to regulatory necessity, risk and proportionality
- protect and enhance
  - Australia's reputation for quality higher education and training services
  - Australia's international competitiveness in the higher education sector
  - excellence, diversity and innovation in higher education in Australia
- encourage and promote a higher education system that meets Australia's social and economic needs for a highly educated and skilled population
- protect students undertaking, or proposing to undertake, higher education in Australia by requiring the provision of quality higher education, and
- ensure students undertaking or proposing to undertake higher education, have access to information relating to higher education in Australia.

## GOVERNANCE

### Basic Principles of Regulation

TEQSA's approach to regulation will be proportionate and risk-based.

Part 2 of the Bill establishes three 'basic principles for regulation'. These three basic principles with which TEQSA must comply are:

- (a) the principle of **regulatory necessity** – this means that in exercising its powers, TEQSA must not burden the higher education provider any more than is reasonably necessary
- (b) the principle of **reflecting risk** – this means that in exercising its powers, TEQSA must have regard to a range of factors, including the provider's history of scholarship, teaching and research; its students' experiences; its financial status and capacity; and its history of compliance with the Act.
- (c) the principle of **proportionate regulation** – this means that TEQSA must exercise its powers in proportion to any non-compliance, or the risk of future non-compliance, by the provider.

These three principles were developed jointly with representatives of the higher education sector through the consultation process.

Together, these principles underpin TEQSA's risk-based regulatory approach which will take into account the scale, mission and history of each provider.

TEQSA's focus will be on higher risk providers, allowing higher quality, lower risk providers to operate without unnecessary intrusion.

## **TEQSA Commissioners**

TEQSA will be constituted by five Commissioners:

- a Chief Commissioner
- two full-time Commissioners, and
- two part-time Commissioners.

Major regulatory decisions can only be taken by the Commission as a whole. This provides higher education providers further certainty that regulatory action taken by TEQSA will be soundly based and subject to appropriate checks and balances.

The Commission is unable to delegate decisions in relation to registration, re-registration or de-registration, granting or changing a registration category, granting or changing self-accrediting authority or the determination of fees. Decisions regarding imposing or varying conditions of registration, requiring information, or instigating cancellation or other administrative sanctions are also unable to be delegated.

Decisions which TEQSA can delegate to a single Commissioner include those regarding accrediting, re-accrediting and removing the accreditation of a course, or imposing, varying or revoking a condition on an accreditation of a course of study.

All Commissioners will be appointed by the Minister for Tertiary Education in consultation with the Minister for Research. Appointments will be made on the basis of appropriate qualifications, knowledge and expertise.

## **Establishment of TEQSA**

TEQSA will be an independent body operating at arms length from the Government. Part 8 of the Bill sets out the establishment and functions of TEQSA.

The Minister is expressly prohibited from giving a direction about, or in relation to, a particular higher education provider. This will ensure that TEQSA will make its regulatory decisions free from political interference.

The Minister may only give a direction to TEQSA if the Minister considers it necessary to protect the integrity of the higher education sector.

TEQSA's functions and powers will include:

- registering and re-registering higher education providers
- accrediting and re-accrediting courses of study
- conducting thematic and quality assessments
- monitoring and enforcement activities, including undertaking compliance assessments and investigative actions
- making recommendations to the Minister on matters regarding the quality or regulation of higher education providers, and
- collecting, analysing, interpreting and disseminating information relating to: higher education providers and awards; quality assurance practice, and quality improvement; and the Higher Education Standards Framework.

## **The Higher Education Standards Panel**

Part 9 of the Bill establishes of the Higher Education Standards Panel (the Panel).

The Panel will be responsible for developing standards and advising and making recommendations to the Minister and TEQSA on matters relating to the Higher Education Standards Framework. The Panel must consult with interested parties when developing the standards.

To ensure there is a separation between the standards-setting function of the Panel and the regulatory and quality assurance functions undertaken by TEQSA, the Panel will be independent of the governance of TEQSA and will report directly to the Minister. The Panel will be made up of a Panel Chair and at least four and up to ten other members.

Panel members will be appointed by the Minister for Tertiary Education, in consultation with the Minister for Research, and will take into account an appropriate balance of professional knowledge and demonstrated expertise and have regard to the interests of states, territories and students.

## **HIGHER EDUCATION STANDARDS FRAMEWORK**

TEQSA will register and evaluate the performance of higher education providers against the new Higher Education Standards Framework set out in Part 5 of the Bill.

The Higher Education Standards Framework will consist of the following domains:

- Provider Standards comprising:
  - the Provider Registration Standards
  - the Provider Category Standards
  - the Provider Course Accreditation Standards
- Qualification Standards
- Teaching and Learning Standards
- Research Standards
- Information Standards, and
- Other standards against which higher education providers and the quality of higher education can be assessed.

All providers must meet what is described in the Bill as the Threshold Standards in order to enter and remain within Australia's higher education system. Together, the Provider Standards and the Qualification Standards constitute the Threshold Standards.

The Provider Standards will be based on the current National Protocols. The Qualification Standards will be based on the Australian Qualifications Framework.

Those standards found in the Higher Education Standards Framework that are not part of the Threshold Standards will be new standards developed with the sector. These will be drawn on by TEQSA when conducting its quality assurance activities.

## **Making the Standards**

The Minister for Tertiary Education may, by legislative instrument, make the standards, except the Research Standards, following consultation with the Minister for Research. The Research Standards may be made by the Minister for Research, following consultation with the Minister for Tertiary Education. All standards will be disallowable instruments.

Before making a standard, a draft of the standard must be developed by the Panel and the Minister for Tertiary Education must consult with the Council consisting of Commonwealth, state and territory ministers responsible for higher education, TEQSA and the Minister for Research. This process will similarly apply to the Minister for Research who will be required to consult with the Minister for Tertiary Education before making the Research Standards.

The Interim Chair and the Interim CEO of TEQSA have been engaging with the higher education sector on the development of the standards. Consultation on the first draft of the Provider Standards took place in March and April 2010. The second draft of the Provider Standards was released to stakeholders for comment in November 2010. As part of the active consultation process, a stakeholder workshop was held in Melbourne on 7 February 2011.

The Department will publish the third draft of the Provider Standards for public exposure and comment in March or April 2011.

## **REGISTRATION AND COURSE ACCREDITATION**

### **Registration**

The legislation replaces the state and territory based systems of registration. Higher education providers who wish to operate in Australia must be registered by TEQSA. Details of the registration process are set out in Part 3 of the Bill.

Applicants may apply to TEQSA for registration within a provider category. TEQSA will undertake a preliminary assessment of the application for registration within 30 days of receiving it. The applicant, if advised by TEQSA to proceed, will undergo a substantive assessment process and be asked to provide any additional documentation required by TEQSA.

The Bill provides that TEQSA must make a decision on an application within 12 months of receiving it and in special circumstances may extend this period to 24 months. Once a decision to grant or reject an application is made TEQSA will notify a provider within 30 days of making a decision

In assessing a provider for registration, TEQSA will assess it against the Threshold Standards.

TEQSA will determine the period for which the applicant is registered, however, the period of registration must not be more than 7 years.

A registered higher education provider must comply with the conditions set out in the legislation as well as any conditions that have been imposed on its registration.

### **Course Accreditation**

Part 4 of the Bill covers the accreditation of courses of study. It applies to any courses that a provider is not authorised to self-accredit.

Registered higher education providers can apply to TEQSA for a course of study to be accredited. TEQSA will accredit a course of study if it is satisfied that it meets the Threshold Standards.

TEQSA must make a decision on an application for accreditation within 12 months of receiving it. Similarly to registration, processes for preliminary and substantive assessments apply. TEQSA will determine the period for which a course of study is accredited, however, the maximum period of accreditation is 7 years.

TEQSA may impose conditions on the accreditation of a course of study. A registered provider must comply with the conditions set out in the legislation as well as any conditions that have been imposed on its course accreditation.

### **National Register of Higher Education Providers**

Higher education providers operating in Australia will be required to be listed on the National Register of Higher Education Providers, which will be publicly available on the TEQSA website. Part 11 of the Bill sets out the relevant provisions.

### **Fees**

Part 8 of the Bill provides further details on TEQSA's ability to charge fees and its reporting responsibilities. TEQSA's fees will be charged on a cost recovery basis. TEQSA will charge fees for the services it performs in relation to registration and accreditation, as is currently the case with state and territory Government Accreditation Agencies. Fees, structure of payments and circumstances of payments will be determined by TEQSA by legislative instruments.

### **Service Standards**

TEQSA will be required to develop service standards which it will be required to meet when performing its functions. These will include a range of measures including timeframes to make decisions, particularly those on provider registration and course accreditation.

## **INVESTIGATIVE POWERS AND SANCTIONS**

The Bill provides that TEQSA will have investigative powers and sanctions that are similar to those found in the *Education Services for Overseas Students Act 2000* and the legislation to establish the National VET Regulator.

In exercising its powers, TEQSA must act in accordance with the three basic principles of regulation set out in Part 2 of the Bill:

- the principle of regulatory necessity
- the principle of reflecting risk, and
- the principle of proportionate regulation.

The Bill creates offences and civil penalties, including for the following:

- pretending to be a university
- offering or conferring an award without requiring a course to be completed
- falsely representing that a course is accredited
- providing unaccredited courses, and
- breaching conditions of registration or accreditation.

Investigative powers are available to assist TEQSA determine whether the provisions of the legislation are being met. TEQSA's powers include the ability to:

- request information from a person connected with a higher education provider
- exercise enforcement powers – e.g. searching premises to look for and seize evidential material, and
- ask questions and seek the production of documents.

The actions that TEQSA may take in response to potential breaches of the legislation include:

- accepting enforceable undertakings
- applying to the Federal Court for injunctions, and
- seeking the application of civil or criminal penalties.

## **REVIEW OF TEQSA DECISIONS**

Most of TEQSA's decisions will be reviewable. Providers can apply for internal review of a decision made by TEQSA. TEQSA must make a decision with 90 days of receiving an application for reconsideration. An application for further review can be made to the Administrative Appeals Tribunal.

## **INFORMATION SHARING**

Part 10 of the Bill makes provision for the disclosure and use of information by TEQSA.

TEQSA may not make an unauthorised disclosure of higher education information. The legislation enables TEQSA to disclose information about breaches of regulatory requirements in certain circumstances, and for TEQSA to disclose information to Tertiary Admission Centres, to the Minister and Secretary, to professional bodies, to other Commonwealth, state or territory government bodies and a regulatory authority of another country, in specified circumstances.

TEQSA may also release a range of information to the public providing benefits to the sector through increased transparency. For example, in addition to maintaining the National Register of Higher Education Providers, as part of its functions, TEQSA may also collect, analyse, interpret and disseminate information relating to higher education providers, regulated higher education awards, quality assurance practice and quality improvement in higher education, and the Higher Education Standards Framework.

## **RELATIONSHIP WITH STATE AND TERRITORY LAWS**

Division 4 of Part 1 of the Bill specifies the interaction between the TEQSA's legislation and state and territory laws relating to higher education including those that will continue to operate simultaneously with the legislation.

Registered higher education providers and those seeking registration will not be required to comply with state or territory laws that purport to regulate the provision of higher education. The Bill specifies that the exclusion of state and territory laws regulating higher education does not include a law, to the extent that the law:

- establishes the higher education provider or regulated entity
- regulates who may carry on an occupation, or
- is of a kind specified in the regulations.

State and territory laws that regulate a matter only part of which relates to the provision of higher education also continue to apply, unless that law is of a kind specified in regulations. Examples of such state or territory laws that may only partly cover the provision of higher education could include privacy laws, fair trading laws, auditor-general laws and ombudsman laws.

## **FINANCIAL AND REPORTING REQUIREMENTS**

TEQSA is required to prepare and provide the Minister with strategic plans, annual operational plans and annual reports. The annual report is to be presented to parliament and will include financial statements and audit reports on those statements as required by the *Financial Management and Accountability Act 1997*.

## **CONSEQUENTIAL AND TRANSITIONAL PROVISIONS**

The *Tertiary Education Quality and Standards Agency (Consequential Amendments and Transitional Provisions) Bill 2011* (the C&T Bill) deals with consequential and transitional matters arising from the enactment of the Bill. It provides for consequential amendments to existing Commonwealth law, namely the *Higher Education Support Act 2003* and the *Education Services for Overseas Students Act 2000*. These amendments update those acts to recognise the role of TEQSA in regulating the higher education sector.

The C&T Bill provides for the transition of providers' registration from the states and territories to TEQSA. It provides that universities' self-accrediting authority will be automatically transitioned into the new regulatory environment as part of universities' registration with TEQSA.

The C&T Bill provides for the Minister for Tertiary Education to make the first Threshold Standards, without needing the Higher Education Standards Panel to have developed the draft. This is necessary because the Panel cannot be appointed prior to the legislation coming into force, and in order to give providers regulatory certainty. Provider Standards are being developed in consultation with the higher education sector and an exposure draft will be publicly released for comment in March or April 2011.