

IRU: response to TEQSA Future Directions discussion papers:

- **TEQSA regulatory processes**
- **TEQSA's regulatory risk framework**

The Innovative Research Universities (IRU) strongly supports the conclusions of Professors Kwong Lee Dow's and Valerie Braithwaite's *Review of higher education regulation*. The Report is carefully argued and its conclusions nuanced. It argues that the response to it should showcase how regulation should be implemented as an effective partnership amongst all relevant bodies.

The IRU recognises the intention of the Tertiary Education Quality and Standards Agency (TEQSA) to respond to concerns about its approach to date as reflected in the Review and the Minister, Mr Pyne's, consequent direction to TEQSA of 22 October 2013.

The two Future Directions discussion papers propose to streamline the TEQSA approach to:

- its responsibilities to register and reregister higher education providers, and to accredit and re-accredit the qualifications offered by those providers unable to accredit on their own behalf; and
- use of a regulatory risk framework as a significant input to carrying out its responsibilities as set out in point one.

Overall the proposed regulatory process fits more closely with the principles set out in part 2 of the *TEQSA Act 2011* of regulatory necessity, reflecting risk, and proportionate regulation than the initial approach which appeared to give little weight to information about the provider prior to TEQSA's creation. This has hindered the due targeting of TEQSA activity.

Concerns about the value of the risk framework remain strong, even though its application is proposed to be more targeted.

Consistent with Lee Dow and Braithwaite, the real test of the changes proposed is not the words but the spirit in which they will be interpreted and applied. The following comments assume the spirit of the Lee Dow and Braithwaite recommendations.

Changes to Regulatory Processes

Figure 1 of the discussion paper provides a useful schematic illustration of where TEQSA would be less intense and where higher scrutiny would follow. The challenge for TEQSA (and providers) is to treat the diagram as a useful illustration of the kind of factors that should drive whether lower or higher scrutiny applies and not consider it the full cast of the process. TEQSA needs to embrace the concept outlined, not hold rigidly to the cited examples.

On the specific changes the IRU supports the proposals to:

- reduce the scope of the assessment, giving greater recognition that universities and many other providers have usually been operated effectively;
- reduce the amount of evidence required, through reuse of existing data where relevant and better means for transfer of data; and
- clarify its expectations about the information to be provided while maintaining provider responsibility and choice concerning what is put forward.

IRU agrees that effective relations between case manager and university are important to ensuring TEQSA can target its analysis at crucial areas and reflect the particular nature of the university. However, it is also important that there is coherence to case managers' approach to their task.

Interaction with ESOS

The IRU supports the need to review how well the Education Services for Overseas Students (ESOS) provisions fit with the now comprehensive suite of provisions guiding higher education delivery to any student, Australian or international. ESOS, and the industry Codes it replaced, were devised at a time of limited external regulation of higher education. That has clearly changed. ESOS needs to catch up, to focus on complementing the standard arrangements where additional requirements are needed for international students whether to ensure adherence to visa requirements or to reduce the risks to people coming from another country to study in Australia.

CRICOS is a lead example of duplicated Government activity. It re-accredits qualifications which have already been through a thorough accreditation process by the provider or TEQSA. CRICOS registration should be a process to list relevant qualifications for international students to enroll in, not a duplicative review exercise.

The IRU acknowledges that TEQSA has argued for such a process and must operate within the current requirements in the meantime.

Registration and its renewal

TEQSA proposes that initial registration remain a full scrutiny of the provider and its plans. It is important that this initial process remain robust since it is easier to prevent or postpone entry where the proposal is not satisfactory than to remove a provider's registration subsequently for significantly bad performance. The challenge for TEQSA is to remain open to different approaches that may come forward in initial registration proposals, just as it should be open minded about changes already registered providers initiate when considering their reregistration.

The focus on the essential areas of students and their outcomes makes sense as key to reregistration processes.

Course accreditation

Course accreditation and re-accreditation do not apply to IRU members. In terms of the coherence of the system overall IRU supports TEQSA adjusting its approach to course accreditation to take account of previous accreditation with the provider and evidence of its work in similar areas and at similar AQF levels.

One concern is the use, p8, of 'up to the same AQF level' in contrast to p9 which refers to 'at a different AQF level'. Some providers have accredited postgraduate coursework qualifications but do not offer bachelor qualifications. Should they wish to do so delivery of a postgraduate qualification is useful evidence but not sufficient to presume a less intense consideration of a bachelor degree, which would be a significant change for the provider. More generally, TEQSA should not assume that delivery of a higher AQF level provides more guidance to capacity to deliver a lower level qualification than the reverse.

Regulatory risk framework

The first consideration is how relevant the risk framework is to the principle of regulatory necessity. In its initial manifestation the framework has operated as an effective annual reregistration process only loosely connected to the standards which the formal re-registrations are based on.

The more focused approach to the risk framework brings it back in the direction of information necessary for TEQSA to identify likely cases of mis-performance sufficient to require intervention outside of the registration cycle. However the question still remains whether the risk indicators are actually of use for that purpose.

Key risk areas?

The document is slightly confusing in setting four key areas of essential input information which then collapse into two focus points which emphasise outcomes of Risk to students and Risk to financial position. Of those, Risk to students is clearly central to the role of higher education providers. Risk to financial position is important but there are considerable challenges to assessing it well, in a sector that ranges from universities, intended to exist for the foreseeable future, through small nonprofit organisations supporting training in a particular area to for-profit bodies, which may or may not succeed and which may choose to withdraw from business. The financial arrangements suitable to each can vary considerably.

In terms of the four input areas:

- student profile and outcomes is central to the purpose of higher education and the focus of community interest. It ought to be the focus of TEQSA consideration;
- regulatory history and standing, should assist TEQSA interpret the data it holds to identify what is evidence for real problems and what is merely an artefact of the data or regulator assumptions about correct operation. However, two of the examples in attachment B are of inputs with no necessary connection to the effectiveness of the body concerned;
- staff resources and profile is a very significant input but it is bemusing that student:staff ratio could be used as a serious current day measure. The caveats around its interpretation in the Discussion Paper confirm its low value; and
- financial viability, underpins the provider's operations. Whether any external reviewer could reach useful conclusions based on the data to be assessed is less clear.

Provider information about the risk process

Based on the nature of the data and indicators TEQSA is right to emphasise that its ratings are a guide for its further actions, not a hard measure. The more TEQSA releases information about which points it deems crucial for each indicator the more it encourages others to replicate its actions but for a different purpose. However, it is reasonable to give information to universities about the threshold points so university management can understand better TEQSA's conclusions.

It would be wrong for TEQSA to rank provider outcomes for an indicator as the basis for a quintile analysis. The focus is whether a provider appears sufficiently on track not to require closer scrutiny. That assessment should focus on the threshold of bad performance, and follow up action where providers appear to be below it.

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