

## Tertiary Education Quality and Standards Agency Amendment Bill 2014: IRU submission

The IRU supports passage of the *Tertiary Education Quality and Standards Agency Amendment Bill 2014*.

The *Tertiary Education Quality and Standards Agency Amendment Bill 2014* amends the *Tertiary Education Quality and Standards Agency Act 2011* (TEQSA Act) to give effect to the Government's decision to implement recommendations arising from the independent *Review of Higher Education Regulation*.

On 6<sup>th</sup> March 2014 the Senate referred the provisions of the *Tertiary Education Quality and Standards Agency Amendment Bill 2014* for inquiry and report to **the Senate Education and Employment Legislation Committee** by 16 June 2014.

Comment has been sought in relation to the following aspects of the proposed legislative changes:

- Quality assessments of higher education providers; the delegation of decisions;
- Extending periods of accreditation or registration;
- The appointment of commissioners;
- The roles and responsibilities of the Chief Commissioner and Chief Executive Officer;
- Notifying providers of decisions; the scope of ministerial directions; and
- Ministerial approval being required for legislative instruments which determine fees to be charged.

The IRU has considered in detail the provisions of the new TEQSA Amendment Bill 2014 below.

### 1. Quality assessments of higher education providers

Under the proposed legislation Part 1 will amend the TEQSA Act to remove the quality assessment function. The genesis of this change came from the Review into Higher Education Regulation which was concerned that TEQSA was not combining well its regulatory responsibilities with a broader quality assurance remit. This change will allow TEQSA to focus on the core regulatory activities of registering providers and accrediting courses.

It has been confusing for universities in receipt of requests for information to support a quality assurance inquiry, such as that about the nature and use of third party arrangements. Whereas a request for information concerning the regulatory functions must be addressed in full and accurately, in the quality assurance context information provided should be useful but balanced with timeliness and the effort to obtain it.

TEQSA did not temper its request in this regard, leading some universities to intensive collection of data to little advantage to TEQSA or the sector more broadly. This supports removing the quality assessment role, leaving it to be approached more suitably outside of the regulatory context.

### 2. Delegation of decisions

Under the current legislation, subsection 199(1) outlines to whom TEQSA may delegate decisions, including to a potentially wide range of Commonwealth officials. Subsection 199(2) provides that the delegation power does not apply to certain decision making powers. Section 200 provides specific powers are delegable to a single commissioner.

Since TEQSA commenced its regulatory functions, there has been a backlog of provider re-registration applications, course accreditation applications, course re-accreditation applications. This is due in part to the TEQSA Commissioner's inability to delegate decisions to appropriate TEQSA staff.

The proposed amendments to the delegation provisions will enable TEQSA to delegate functions and powers within the regulatory body. This will mean quicker provision of service to higher education providers, a reduction in the backlog of applications and the implementation of more efficient decision making processes.

The Act is broad about to whom decisions can be delegated. The Amendment Bill would widen the range of decisions able to be delegated. A concern raised is that decisions could be delegated to Commonwealth officials outside of TEQSA. This appears possible but the decision to do so lies with the Commissioners who should be trusted to use it sensibly.

### **3. Extending periods of accreditation or registration**

Under the proposed changes to the TEQSA Act, Schedule 1, Part 3 gives TEQSA the power to extend the period of registration or accreditation for higher education providers.

In practice, a provider's registration may expire earlier or later than a course accreditation expires. The current TEQSA Act does not have any provision allowing TEQSA to extend an existing registration or accreditation. This proposed change should allow TEQSA the flexibility to streamline these processes.

The proposed changes will allow TEQSA to manage the registration or accreditation process.

### **4. Appointment of Commissioners**

Under the proposed legislation, Part 4 will amend the TEQSA Act to provide the Minister with more flexibility to determine the number of TEQSA's Commissioners.

The genesis for these proposed changes is the Review into Higher Education Regulation. The proposed amendments provide the Minister with greater flexibility in determining the most appropriate organisational arrangements by removing the requirement for the appointment of a fixed number of Commissioners and the balance of part time and full time commissioners.

The decision about the Commissioners is ultimately one for the Government to determine to best meet the work load of the Commissioners and ensure effective leadership for the Agency.

### **5. Roles and Responsibilities of the Chief Commissioner and Chief Executive Officer**

Under the current legislation, the TEQSA Act, the Chief Commissioner is also its Chief Executive Officer. The proposed amendments provide for the separation of these two roles with the CEO to focus on management and administration and the Chief Commissioner to focus on regulation.

There is a good argument that separating the roles will assist the Chief Commissioner and other Commissioners focus on the major objectives of the Agency and the leading decisions concerning registration and accreditation that follow, without the time consuming responsibility of managing the Agency's operations.

### **6. Notification of decisions**

This proposed change has been suggested by TEQSA.

Under the current legislation, TEQSA is required to provide reasons for its decisions including those that provide re-registration and re-accreditation.

It is important that TEQSA set out the rationale for any decisions its makes not to register or accredit. These should be based on particular or general weaknesses in the application for registration or accreditation. A successful application however is essentially recognition that the application met

the requirements. It may do so to better in some aspects but it is not useful for TEQSA to highlight variations in the extent to which an application met the requirements. One potential outcome is for providers to appeal that the reasons for success did not properly recognise elements, creating unnecessary work for TEQSA to reduce such outcomes and deal with them when they occur.

The changes in this section also reduce the need for TEQSA to notify a provider where it imposes, varies or revokes a condition on the providers' registration following a request by the provider for it to do so.

The proposed changes fit with the Government's reduction of red-tape agenda and should be supported.

### **7. Scope of Ministerial direction**

The proposed changes to the TEQSA Act amend the scope of the directions that the Minister may give to TEQSA in relation to the performance of its functions and the exercise of its powers.

Currently the Minister may, by legislative instrument, give a direction to TEQSA if the Minister considers the direction is necessary to protect the integrity of the higher education sector. The proposed changes amends the scope of the directions the Minister may give to broaden these to include directions relating to the performance of its functions and the exercise of its powers.

The proposed changes raise some concern that they could diminish the role of the Commissioners. While universities have had concerns about the operation of TEQSA to date IRU remains supportive of the Commissioners having the responsibility to carry through the tasks of the Agency as broadly set by the Government.

### **8. Ministerial approval being required for legislative instruments which determine fees to be charged**

Under the current legislation, TEQSA may, by legislative instrument, determine the fees that it charges for services in performance of its functions, including the formula used to arrive at the fee, the circumstances in which the fees are paid in instalments, and in which they are waived.

The proposed changes to the TEQSA Act provide that TEQSA must not make such a legislative instrument unless the Minister has given written approval. TEQSA must also provide the Minister with information that reasonably assists in the decision making process.

This proposed change will ensure that the Government is aware of and has approved charges on providers, which are necessary due to a requirement for part of the costs of operation to be funded by those being regulated.

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