TEQSA submission to the Australian Universities Accord Panel

April 2023

TEQSA

Contents

Universities Accord submission

TEQSA acknowledges the wide-ranging consultation which the Universities Accord Panel is undertaking and welcomes the opportunity to contribute. Noting students, higher education provider (provider) groups and other stakeholders will speak to their concerns, TEQSA's submission focuses on regulatory considerations for the sector.

Context for the Accord Review

Australia is engaging in the Universities Accord process at a time of technological disruption, rising global uncertainty and economic challenge. All sectors of activity are occupied with the challenges and upheavals of a transitioning economy and societal change, with profound implications for the education system and its capacity to deliver the workforce our nation will require in the future.

The Australian system of higher education is a strong one by international standards and is supported by a relatively mature regulatory framework. This framework consists of not only the *Higher Education Standards Framework (Threshold Standards) 2021* (HES Framework) and the *Tertiary Education Quality and Standards Agency Act 2011* (TEQSA Act) but an abundance of federal and state laws that provide consumer and other protections. In addition, professional accreditation bodies review courses of study to confirm they comply with expectations of the professions.

Australia's higher education landscape, operating within this system, is diverse. Traditionally dominated by universities, of which there are now 42, it now includes 153 non-university private providers. There is strong and continued growth in private providers, many with business models targeting high-demand courses in business and information technology and intensively marketing these to overseas students wishing to study in Australia.

Public universities are also the hallmark of Australia's reputation for world-class research and innovation. Maintaining a strong research system that can be internationally benchmarked is vital to Australia's future and public confidence in outputs and 'return on investment' in research. Strong underpinning data about research quality is essential for this benchmarking.

While our universities will continue to predominate higher education enrolments, much of the growth over the next decade is likely to occur in the private sector. We anticipate increases in the number of dual-sector providers, as current vocational education providers seek to expand the breadth of their course offerings to retain a pipeline of students throughout the education lifecycle. Growing interest in micro-credentials also

indicates community expectations of pathways of learning that are industry driven and can build to, and follow on from, traditional degrees.

The COVID-19 pandemic (the pandemic) tested the resilience of our higher education system, while driving disruptive change. It provided some salutary lessons about reliance on familiar models of international education and even the traditional notion of a campus.

As a result of the pandemic and associated border closures, most providers rapidly transitioned their offerings to fully online delivery. While this supported continuity of delivery and innovation, challenges to quality emerged resulting in reduced student engagement and other challenges relating to academic support, practical and work-integrated learning and ensuring academic integrity for remote or online assessment. There was also an expansion of third-party online delivery arrangements, with these involving increased risk and complexity, requiring attention by providers. Regulatory flexibility supported providers through this period, with measures such as temporary relaxation of requirements for Australian visa holders to attend for on-campus (in country) learning, fee relief for regulatory assessments, extending due dates of regulatory assessments, development of online good practice resources and active engagement with providers. As we emerge from the impact of the pandemic, we now see business models for higher education focused more heavily on online delivery, which present potential new risks as well as opportunities for the sector.

Moving forward, areas of priority in Australia's workforce will need to be matched by expanded and novel approaches to education, retraining and upskilling professionals in fields of national priority. This will depend on government policy and regulatory approaches that support innovation, while ensuring the quality and integrity of Australian higher education and the capabilities of graduates.

Threats to Australian higher education

TEQSA identifies several key threats to Australian higher education, that will require attention, including from the regulator.

1. Changes in the international student marketplace

The reputation and standing of Australian qualifications are fundamental to Australia's participation and competitiveness in international markets. The existence of robust standards and a regulatory framework for higher education has contributed to the strong international reputation of Australian education. To maintain this, contemporary standards and effective regulation need to be responsive to developments in both domestic and international markets and models of delivery.

The pandemic highlighted the risks for Australia's higher education sector, and individual providers, in relying too heavily on one country for international students. Many countries, including the United Kingdom, expanded their transnational education presence during the pandemic, and will provide strong competition in international markets. Responding flexibly to demand and market opportunities will increase reliance on, and risks associated with, education agents for international student recruitment and third-party delivery partners for course delivery. Maintaining effective oversight of these arrangements will be a critical challenge for providers and TEQSA. Visibility of third-party delivery arrangements continues to

pose a regulatory challenge. Legislative amendment may be required to ensure providers are obliged to notify the regulator when these arrangements are established.

2. Threats to academic integrity

Rapid developments in technology and commercial services that facilitate cheating, pose serious threats to academic integrity in Australian higher education. Current issues centre on file sharing websites, contract assignment completion and artificial intelligence (AI). Students who use these resources to cheat compromise their learning outcomes and are vulnerable to blackmail threats. This creates potential vulnerabilities to national security as graduates who have accessed cheating services begin to take up roles where the threat of exposure becomes more serious.

When cheating undermines academic assessment, it threatens graduate outcomes, and more fundamentally, the integrity of qualifications. TEQSA must be satisfied higher education providers are doing enough to ensure graduates are achieving the learning outcomes and capabilities specified for every award.

Detecting the use of cheating services and technology is increasingly challenging particularly due to the increasing sophistication of AI. While large university providers can resource the development of expertise, training, and processes to respond to these risks, it is far more challenging for smaller providers to keep pace and respond effectively.

TEQSA has been very active in responding to these integrity threats at the sector level, using its legislative powers to block access to cheating websites and targeting information campaigns to students about the risks of cheating. We have also developed resources and facilitated expert guidance, to support providers in responding effectively to these challenges. These activities will remain an ongoing priority for TEQSA. It is likely that additional legislative powers will be required in the future to respond to the evolving business models and technologies of cheating services.

It will be essential to remain alive to the potential existential threats to integrity which are emerging through these technological changes. It is a critical challenge for the sector, government and regulatory bodies to harness the benefits of technology while continuing to monitor and respond to underlying risks.

3. Cyber security vulnerabilities and foreign interference

Cyber security and foreign interference will pose risks to Australian higher education into the future. Policy and responses from a range of government agencies will help providers understand their obligations and manage threats. For TEQSA, the role of regulation is to ensure providers can evidence the policies, systems, governance oversight, and external as well as internal, assurance activities required of them to manage these risks. Effective data governance will need to be a high priority for providers to meet their obligations to students and staff under evolving privacy requirements. This will increase the costs of operations for many participants, especially smaller niche providers.

4. Lack of admissions transparency and integrity

The practice of making early and conditional or guaranteed offers of places to students at secondary school is the subject of debate in the sector. Risks arise where access to admissions happens outside a transparent or centralised process or are not subject to robust academic governance oversight. These risks include certain subgroups of students being advantaged, or the corollary that other subgroups are disadvantaged. Absent data and monitoring of the progress of students from these direct entry pathways makes it difficult to assess the benefits and disadvantages of this trend.

5. Challenges to student safety and wellbeing

The pandemic brought sharp focus to the many factors in students' lives that combine to challenge their wellbeing. Focused work will be needed to reassess what responsibilities providers have to positively support student wellbeing and to respond more effectively to those who experience challenges, particularly vulnerable cohorts.

A key area of unresolved concern is the prevalence of sexual assault and sexual harassment experienced by students. Despite support for the sector by TEQSA and peak bodies, public comments by students and the 2021 National Student Safety Survey (NSSS) results show greater attention and ongoing action is needed to ensure the protection and support for students' safety and wellbeing.

The NSSS highlighted at most universities, as many as 40–50% of respondents reported they had little to no knowledge about the support and reporting channels offered by their university. The experience of students in private higher education providers is not as well understood. TEQSA has included this important issue as an area of focus in its annual compliance priorities, has provided best practice guidance material and supported the development of several communities of practice to assist smaller, private providers to respond to these risks.

Many providers have made changes to improve information and access for reporting sexual assault and harassment. Others have introduced mandatory respect and consent training for students. However, changes to the environmental and cultural factors that contribute to sexual assault and harassment are complex and require concerted work. The proactive identification of risks and ensuring robust governance oversight, monitoring, and reporting by providers will be critical to ensure the wellbeing and safety of students are prioritised and sustained. The introduction of additional protections such as those introduced in New Zealand via the *Education (Pastoral Care of Tertiary and International Learners) Code of Practice 2021* may be of benefit in responding to this issue.

Purpose of regulation

The role of regulation of higher education remains unchanged. TEQSA's overarching responsibilities are to enhance the reputation and standing of Australian higher education and protect the interests of students. Importantly, a regulator should be equipped to be prescient about emerging risks and not solely focus on review and audit of past and present performance. This necessarily requires a rebalancing of TEQSA's energies and an evolution of our approach.

The TEQSA Act provides for regulation using the HES Framework and requires TEQSA to comply with the principles of regulatory necessity, risk, and proportionality. The TEQSA Act directs our activities to the registration and cyclic re-registration of providers and for those that do not have self-accrediting authority, the accreditation and re-accreditation of courses of study. Key regulatory sanctions are the imposition of conditions or shortening the period of registration or accreditation. There are limited and specific offence provisions, that can result in financial penalties. Section 114 of the TEQSA Act deals with offences related to academic cheating services.

There are examples in other sectors, including prudential regulation, where the regulator tiers its assurance and reporting requirements according to provider risk and the demonstrated effectiveness of providers' own management of key issues and risks. This regulatory approach merits consideration for higher education. This is because, by proportionately reducing the regulatory demands for providers that have mature systems and consistently exceed threshold standards and protections, regulatory efforts can be focused on providers and risks that are poorly managed. Within the current regulatory model, TEQSA is moving to vary the intensity of its regulatory processes according to provider risk and to focus regulatory assessment more on the strength of provider self-assurance. This approach represents a hybrid of a compliance-based framework and a risk-tiered approach.

While the TEQSA Act clearly sets out regulatory requirements in relation to individual providers, it is increasingly necessary for TEQSA to anticipate, monitor and respond to risks to the higher education sector that could undermine the quality and reputation of higher education or the interests of students. TEQSA is giving increased emphasis to this and where appropriate, working with the sector by providing guidance and resources to build capability and resilience. An example is the work undertaken to communicate risks and trends in academic cheating, and guiding providers on how to effectively manage and respond. In a rapidly changing and highly competitive sector, to effectively anticipate and monitor sector-wide risks, there is a growing imperative for the regulator to have timely access to quality data. Further development of this regulatory focus should ideally be reflected in legislation (for example by revising section 60 of the TEQSA Act to provide a more robust legislative framework for thematic activities) and involve significant development of TEQSA's access to relevant data.

Challenges to effective regulation

Beyond consideration of the regulatory model, there are several key challenges to effective regulation of higher education.

1. Crossover in our regulation with the work of others

Providers regularly tell us about the multiple regulatory and other requirements they need to meet. In addition to meeting the HES Framework and TEQSA assessment requirements, providers, particularly universities, cite the requirements of professional accreditation bodies, and the various federal and state legislative obligations including financial, industrial, health and safety, disability and equal opportunity requirements. Public policy initiatives and reporting requirements can also contribute to the regulatory burden of providers. Complexity arises due to the need for providers to engage with different jurisdictions, legislation and bodies. This is mirrored by the difficulty for students in identifying the relevant external agency for complaints handling when they cannot resolve a grievance with their provider.

TEQSA works to reduce regulatory burden and regulatory duplication by incorporating or acknowledging the outcomes of other legislative obligations (e.g. financial reporting) or professional accreditation assessments into its own regulatory activities. Since 2021, TEQSA has been working with the Australian Health Practitioner Regulation Agency (AHPRA) as a member on the Accreditation Committee to support strengthening the health professional accreditation system, including greater harmonisation where possible.

The intersection of TEQSA and the Australian Skills Quality Authority's (ASQA) regulatory work is often raised as a concern for dual-sector providers and for facilitating pathways for students to transition from vocational to higher education. Resolving the differing regulatory requirements of TEQSA and ASQA would require harmonisation of the standards frameworks and the legislative frameworks underpinning the VET and higher education sectors. Success in harmonising regulatory arrangements would also depend on alignment of public policy and funding regimes. The VET sector and the higher education sector play important but distinct roles in Australia's economic and social prosperity. At its best, regulation should support diversity and innovation, but there is also the risk of homogeneity and convergence. Supporting the purpose and function of each sector should be the drivers for the respective standards and regulatory frameworks.

Existing restrictions on information sharing between TEQSA and ASQA impact our ability to rely to a greater extent on each agency's work. Better alignment of existing regulatory activities could be supported by legislative changes making it easier for both agencies to share information. TEQSA and ASQA are working to optimise existing processes to avoid duplication of requirements, share information and intelligence as fully as possible, to minimise the burden on providers and support effective management of sector risks.

2. Engagement with students

TEQSA's regulatory purpose includes protecting the interests of students. While TEQSA engages and consults with student peak bodies, we are currently working to ensure our activities are informed by an understanding of the concerns of students in the broadest sense,

including First Nations students, those who live with disability, international students and others who experience challenges participating in higher education. We continue to develop this aspect of our regulatory work.

Consideration of the international experience is relevant in this area, like that of the Office for Students (OfS), the regulator of higher education in England. The OfS engages a student panel to advise their board and inform policy development. While prior to the pandemic TEQSA had a student panel, we are examining how experiences of the OfS can inform our approach.

3. Ensuring regulation keeps pace with the evolution of an Australian qualification

The pandemic, and shift to predominantly online learning, raised questions about the quality of learning and what is recognised as an Australian qualification. Some overseas students found their home countries were reluctant to recognise qualifications obtained fully online or offshore. While there is an appetite among providers to expand to fully online and offshore delivery, there is a need to carefully consider how central face-to-face engagement and onshore participation are to the learning experience and graduate outcomes. Important risks to successful off-shore and transnational delivery include provision of adequate student learning support, and student safety and wellbeing.

Regulation will need to keep pace with changing trends in educational delivery, and ensure regulatory processes are sufficient to maintain community confidence in the quality of Australian qualifications. This will necessitate building capacity for TEQSA to assure itself of the quality of learning and the veracity of qualifications awarded by providers. Noting recent proliferation in commercial cheating services and AI, this regulatory focus will include how providers assure assessment methods and learning outcomes. Ongoing work will be needed with providers to ensure they fully meet the HES Framework for all modes of course delivery and have strong self-assurance in place for courses they deliver directly, and via third parties.

More fundamentally, students undertaking higher education see themselves as consumers and want quality and value for money. It is important that they *"get what it says on the sticky label"*. In a dynamic and competitive market, regulation has a key role in assuring the quality and integrity of Australian qualifications.

4. Maintaining the integrity of provider categories

The HES Framework sets out the criteria for providers to become an Institute of Higher Education, University College, Australian University or Overseas University. While all providers must meet the HES Framework, there are drivers for mid-size providers to seek recognition as an Australian University. These include the high standing of Australian universities domestically and internationally for delivering quality teaching and research. To protect this, it is important to ensure providers can only enter a University College or Australian University category when they demonstrate sustained, mature, and credible performance against the HES Framework, including the criteria specified for the provider category being sought.

Quality research and innovation is vital to Australia's prosperity and the international reputation of the sector. The undertaking of research that leads to new knowledge and original creative endeavour, together with research training, represents a fundamental and defining feature of the 'Australian University' provider category. National assessment of research quality assures the Australian Government and the Australian community that research is measurably strengthening and enhancing confidence from the international community in Australia's research. Measures of research quality are critical to higher education provider categories, including determining eligibility for the category of Australian University. Following review of the Excellence in Research Australia (ERA), any new measures will be integral to regulatory assessments. In addition to the HES Framework, the *Tertiary Education Quality and Standards Agency (Quality of Research) Determination 2021* sets out research requirements for Australian Universities. This has provided much-needed clarity to the sector about the research expectations for this category of provider. Nevertheless, several providers have challenged TEQSA's decisions on their provider category in the Administrative Appeals Tribunal (AAT). We anticipate this will continue to be a contested area, which will a require clear and defensible regulatory approach.

5. Improving clarity for students, about who can help resolve individual disputes

Presently several different bodies are available to support students in the resolution of disputes with their provider. However, some may only assist a certain group of students and only in certain circumstances. This is complex for students to navigate and can lead to students coming to TEQSA as the regulator expecting us to resolve individual disputes, which is not our role as mandated by the TEQSA Act.

Given the complex environment students face in seeking support to resolve disputes with their provider, continued focus on giving students clarity about which body they can seek support from and when, remains an important issue.

6. Access to relevant data

A modern regulatory approach requires timely access to data to monitor performance and risks to individual providers, as well as analysis of emerging and known risks to the sector. Improved access to administrative data will be necessary to strengthen the regulatory contribution to risk identification and management.

Several areas that are key to quality and reputation are currently difficult to monitor, due in part to the lack of systematic and timely collection of data. Earlier in this submission, we identified third-party recruitment and delivery arrangements for transnational education as key risks. There are currently limited measures to monitor performance or emerging concerns about these activities. Stronger data and reporting requirements are also needed to monitor provider support to, and progress of, students from vulnerable and underrepresented cohorts.

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