Review of the impact of the *Tertiary Education Quality and Standards Agency Act 2011* on the higher education sector

Submission by TEQSA

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Introduction

Outline
This introductory section provides a summary of the background to the review and the purpose of this submission. The following sections focus separately on each of the individual terms of reference approved by the Minister. Where relevant, the submission addresses matters specifically raised in the letter inviting a submission by TEQSA.

Background

The Review of Australian Higher Education led by Professor Denise Bradley AC (the Bradley Review) recommended that an independent national regulatory body be responsible for regulating all types of higher education. The Review team reasoned that a national approach would provide a more effective, streamlined and integrated sector, achieving a sustainable and responsible higher education system in the larger, more diverse and demand-driven environment.

In responding to the Bradley Review in 2009, the Australian Government announced a landmark reform package for higher education to expand the system and create new opportunities for all Australians to reach their potential in higher education. The Government also committed to ensuring that growth in the higher education system will be underpinned by a robust quality assurance and regulatory framework which places a renewed emphasis on student outcomes and the quality of the student experience. As part of that reform package, the Tertiary Education Quality and Standards Agency Act 2011 (TEQSA Act) established TEQSA and the Higher Education Standards Panel (HESP) as part of the new national regulatory and quality assurance environment for Australian higher education.

Under the TEQSA Act, the functions of the HESP are to advise and make recommendations to the Minister on making and varying the Higher Education Standards Framework, and to advise the Minister and TEQSA on other matters relating to the Higher Education Standards Framework. The functions of TEQSA include:

1. registering regulated entities as higher education providers;
2. accrediting courses of study;
3. investigating compliance with the TEQSA Act, including by conducting compliance assessments, quality assessments and accreditation assessments;
4. providing advice and recommendations to the Minister on matters relating to the quality or regulation of higher education providers;
5. collecting, analysing, interpreting and disseminating information about higher education providers, higher education awards, quality in higher education and the Higher Education Standards Framework;
6. conducting training to improve the quality of higher education;
7. cooperating with TEQSA’s counterparts in other countries;
8. functions conferred under other legislation, such as the Education Services for Overseas Students Act 2000.

The objects of the TEQSA Act are:

(a) to provide for national consistency in the regulation of higher education; and
(b) to regulate higher education using:

(i) a standards-based quality framework; and
(ii) principles relating to regulatory necessity, risk and proportionality; and

(c) to protect and enhance:

(i) Australia’s reputation for quality higher education and training services; and

(ii) Australia’s international competitiveness in the higher education sector; and

(iii) excellence, diversity and innovation in higher education in Australia; and

(d) to encourage and promote a higher education system that is appropriate to meet Australia’s social and economic needs for a highly educated and skilled population; and

(e) to protect students undertaking, or proposing to undertake, higher education in Australia by requiring the provision of quality higher education; and

(f) to ensure students undertaking, or proposing to undertake, higher education, have access to information relating to higher education in Australia.

Section 203 of the TEQSA Act states that the Minister must, before 1 January 2016, cause a review to be started of the impact on the higher education sector of the TEQSA Act. The Minister did so by approving terms of reference for the review on 12 December 2015 and endorsing the HESP to provide oversight for the review.

The terms of reference approved by the Minister are as follows:

1. what has changed for the sector in moving to a single national regulatory framework from multiple state- and territory-specific arrangements
2. the extent to which the TEQSA Act has contributed to improved quality in the delivery of higher education
3. the extent to which the TEQSA Act has contributed to improved regulation
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.
5. whether there are amendments to the TEQSA Act or other changes that would enhance the Act’s impact or its administration
6. whether the required functions of the HESP are adequately reflected in the TEQSA Act.

The Department of Education and Training subsequently engaged Deloitte Access Economics to undertake the review.

**Purpose of this submission**

Since TEQSA was established, TEQSA has collected a wide range of information about Australia’s higher education sector and has developed substantial experience in interpreting and applying the TEQSA Act. Accordingly, while the review is not a review of TEQSA’s operations or its approach, it is important that the review is conducted in a way which allows consideration of this information and experience.

This submission is designed to ensure that Deloitte Access Economics (and, through them, the Department of Education and Training, the HESP and the Minister) have the capacity to consider all relevant information available to TEQSA in conducting the review of the impact of the TEQSA Act.
TOR 1 - What has changed for the sector in moving to a single national regulatory framework from multiple state- and territory-specific arrangements

Previous regulatory frameworks

Prior to 29 January 2012, regulation of higher education in Australia was the responsibility of State and Territory government agencies. This meant that regulation of Australian higher education occurred under eight separate Acts of Parliament, each with different decision makers. In addition, universities and other providers approved for FEE-HELP were required to be audited by the Australian Universities Quality Agency (AUQA) under the provisions of the Higher Education Support Act 2003 (HESA).

While the legislative tests for assessment of applications for registration or course accreditation were linked to the National Protocols for Higher Education Approval Processes (National Protocols), the means by which those links were made varied across the relevant legislation. The State/Territory Acts also differed in relation to matters including the specification of the other legislative requirements to be met by applicants, the nature of what was required to be submitted and the nature of the decision maker (in some cases the relevant Minister, in some cases officials in the Minister’s Department and in other cases a statutory body established under State/Territory law). These differences in approaches were exacerbated by the lack of a mechanism to moderate regulatory outcomes.

National regulatory framework

The provisions of the Tertiary Education Quality and Standards Agency (Consequential Amendments and Transitional Provisions) Act 2011 (Transition Act) meant that there was a smooth transition from state-based registration to national registration. The Transition Act ensured that the existing registration, course accreditation and self-accrediting authority held by higher education providers continued under the new national framework.

From 29 January 2012, providers were regulated under a single Act of parliament, the TEQSA Act. Under the TEQSA Act:

- the basic principles for regulation and a single statutory framework for decision-making, ensure that there is a consistent approach to the regulation of higher education;
- a single framework for information handling, allows for transparency in TEQSA’s operations while ensuring appropriate confidentiality of sensitive information;
- decisions are made by a single independent agency (TEQSA), with the Commissioners of TEQSA required to have appropriate qualifications, knowledge and experience in order to be appointed;
- merits review is undertaken by a single body, the Administrative Appeals Tribunal, to ensure a consistent approach to the review of TEQSA’s decisions;
- in addition to its regulatory functions, TEQSA is given functions with respect to the collection and dissemination of information, providing greater opportunities for the publication of information and analysis about Australian higher education;
The Australian Government options paper on the future of higher education reform, *Driving Innovation, Fairness and Excellence in Australian Higher Education*, states that “it is essential that the integrity of our higher education system and Australia’s international reputation for quality continue to be upheld by a strong quality assurance system, including the new Higher Education Standards Framework, due to commence in 2017, and the Tertiary Education Quality and Standards Agency (TEQSA). Australian higher education must stand for quality in the eyes of the world, in the eyes of Australian employers and indeed all Australians.” The TEQSA Act supports this position.

**Benefits for providers**

As part of the national registration of higher education providers, providers are subject to a single fee for applications irrespective of the number of Australian jurisdictions in which they operate, rather than being required to pay multiple fees (and complete multiple forms) to obtain the necessary approvals.

TEQSA has also been able to develop clear guidance material for higher education providers about the requirements of the Threshold Standards and the TEQSA Act, allowing higher education providers to receive nationally consistent advice about the requirements of the relevant legislation and the application of those requirements by the responsible decision-making body. Over time, TEQSA has included “better practice” advice and external references to promote the ongoing development of higher education providers’ approaches.

The establishment of a single national higher education regulator has also facilitated the development of international cooperative arrangements between TEQSA and regulatory authorities in other countries. Details of the arrangements entered into by TEQSA are available at [http://www.teqsa.gov.au/about/international-engagement/international-quality-assurance-agency-agreements](http://www.teqsa.gov.au/about/international-engagement/international-quality-assurance-agency-agreements). These arrangements improve the quality of decision making by ensuring that relevant information available to other bodies can be used by TEQSA, as well as providing opportunities to reduce the burden associated with the collection of the same information by multiple bodies.

**Benefits for students**

The objects of the TEQSA Act reflect that the protection of students and the provision of information to students about higher education were central to the rationale for TEQSA’s establishment.

Students now receive clearer information than ever before to inform their choices about higher education. This information includes the current registration status (including any conditions imposed) of each Australian higher education provider and, for courses accredited by TEQSA, the accreditation status of each higher education course accredited by TEQSA (including any conditions). Public reports contain information about the reasons for each decision made by TEQSA, including details of positive and adverse findings made by TEQSA.

A number of provisions of the current Higher Education Standards Framework, the *Higher Education Standards Framework (Threshold Standards) 2011* (2011 Standards), also deal with the information required to be provided to current and prospective students, ensuring that there is a consistent framework dealing with this issue and that information for students is accurate.

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and not misleading. The Higher Education Standards Framework (Threshold Standards) 2015 (2015 Standards), which commences on 1 January 2017, contains an even greater emphasis on the provision of information to students to facilitate informed choice and participation.

More generally, the TEQSA Act provides for a framework of robust standards which ensures that registered providers are required to address issues central to the student experience. These standards are nationally consistent and publically available, meaning that current or prospective students can have confidence in the quality of Australian higher education.

Benefits for other stakeholders

Based on the most recent published data, Australia’s higher education sector generated $34.3 billion in revenue in the 2015 data collection year\(^2\). Enrolling in a higher education course is a significant investment of both time and money – though the establishment of TEQSA as a national regulatory and quality assurance agency for higher education gives those in Australia and in other countries the confidence to invest in Australian higher education. Indeed, in a speech to the inaugural TEQSA Conference, Australia’s Chief Scientist Dr Alan Finkel AO said that “TEQSA’s role is vital to the future of higher education, just as higher education is vital to the future of Australia”\(^3\). The continued success of Australia’s higher education sector, supported by the framework in the TEQSA Act, is of substantial economic benefit to Australia.

The TEQSA Act also provides a platform for improved research and analysis on higher education in Australia, with TEQSA now providing a range of publications which give improved information about various aspects of Australian higher education, including TEQSA’s statistics reports and key financial metrics reports. The National Register of Higher Education Providers established under section 198 of the TEQSA Act provides clear and consistent information about all Australian higher education providers, while also linking to the Quality Indicators for Learning and Teaching (QILT) page to assist in choices about higher education.

Jurisdictional issues

Unlike the Australian Skills Quality Authority, TEQSA’s legislative authority is not based on a referral of power from the States and Territories, meaning that TEQSA may only regulate entities which fall within its constitutional authority. Since inheriting its regulatory functions TEQSA has referred a small number of entities to the relevant state governments for offering higher education without being registered to do so, where those entities fall outside TEQSA’s remit. A small number of other higher education providers previously registered under state legislation were also unable to obtain registration with TEQSA for this reason.


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

TEQSA considers that there are three main ways in which the TEQSA Act has contributed to improved quality – (1) the development of a clear and consistent national framework which articulates the standards that must be met by higher education providers, (2) providing for the regulation of current and prospective higher education providers against this standards framework and (3) providing for advice and guidance on issues relevant for providers.

Quality improvement through standard-setting

As noted above, while all state and Territory regulators of higher education operated under legislation based on the National Protocols, that legislation varied in relation to the means by which the National Protocols were incorporated and the nature of any other matters considered. Further, while AUQA was responsible for auditing providers approved for FEE-HELP, these audits were conducted against the providers’ own plans and objectives, rather than against standards which applied to all providers.

The 2011 Standards were drafted to provide a clearer basis for assessment and (where appropriate) enforcement, moving away from the guideline-based National Protocols. The 2015 Standards reflect a further development of the balance between the need for clear guidance and the need for flexibility in the means by which compliance is effected. The 2015 Standards are also designed to make the various standards easier to apply for the purposes of providers’ own internal monitoring, reporting and governance activities, as well as for TEQSA’s regulatory processes – improving providers’ capacity to address the matters necessary to offer a quality higher education experience.

The Standards are designed to “ensure that the barrier to entry into the higher education sector is set sufficiently high to underpin and protect the quality and reputation of the sector as a whole”, and also “establish a baseline for operational quality and integrity from which all providers can continue to build excellence and diversity.” The Standards are not intended to develop quality beyond the requirements specified in the Standards – though as noted earlier, they are intended to facilitate providers’ own monitoring, quality assurance and quality development.

Quality improvement through regulation

Consistent with Ministerial Direction No. 2 of 2013, since October 2013 TEQSA has concentrated on processing applications under the TEQSA Act for registration and course accreditation. While these activities focus on an assessment against the Higher Education Standards Framework rather than on quality improvement, the nature of TEQSA’s activities has contributed to the quality of Australian higher education through (1) the departure from the sector of providers found not to meet standards, (2) strong controls on new entrants to the sector and new courses to ensure that new entrants or courses meet the requisite standards of

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quality and (3) supervising changes to the operations of existing providers to address identified quality concerns.

The registration of three providers ended following a TEQSA decision to refuse to renew registration – these decisions were made in relation to Phoenix Institute of Australia Pty Ltd, Williams Business College Pty Ltd and Worldview Centre for Intercultural Studies. TEQSA has also cancelled the registration of two providers – SA Management Institute Pty Ltd and, more recently, Australian Institute of Professional Education Pty Ltd. These decisions are made following a rigorous assessment process and the provision of a reasonable opportunity to address concerns identified by TEQSA.

TEQSA has rejected five applications for registration – of these, two applicants obtained registration following consent orders in the Administrative Appeals Tribunal. A further 13 applications were withdrawn by providers prior to a decision being made – these withdrawals have generally occurred following feedback from TEQSA about concerns which could lead to the rejection of the application.

TEQSA only registers a new higher education provider following a rigorous assessment of the provider’s capacity to deliver the requisite standard of education. Of the new higher education providers TEQSA had registered as at 30 June 2016:

- As noted above, two decisions were made by the Administrative Appeals Tribunal following the provision of further evidence after an initial rejection of the application.
- Eight registration decisions involved the registration of an entity to which an existing higher education provider’s operations had been transferred.
- Half of the remaining 14 decisions were accompanied by decisions to impose conditions on registration or on course accreditation to address particular risks identified during the assessment of the application. These conditions provide a structured mechanism for TEQSA to work with the provider to oversee ongoing improvement in the provider’s operations. The cases in which conditions were not imposed generally involved providers with a strong existing track record in the delivery of higher education or related services.

For applications from existing providers, TEQSA assesses applications against a minimum set of standards, with the scope of applications (or the evidence required by TEQSA) expanded based on identified risks or compliance concerns. This process allows TEQSA to focus its activity on those matters which represent risks to the quality of higher education and work with providers to address those risks or (where necessary) prevent providers from offering higher education in a manner which does not meet the requirements in the standards. Data about the outcomes of assessments has previously been provided to Deloitte Access Economics, illustrating that TEQSA has taken action based on findings about all sections of the Threshold Standards.

Quality improvement through advice and guidance

TEQSA’s approach to its functions reflects the basic principles for regulation in Part 2 of the TEQSA Act. In particular, and wherever possible, TEQSA seeks to address issues it identifies through discussions with higher education providers rather than through the use of statutory powers. Of the 1179 applications in relation to registration and course accreditation which were decided by TEQSA to 30 June 2016, fewer than 22% (or 259) were rejected or involved the imposition of conditions or a period of registration or accreditation less than the maximum seven
years. In many cases, the outcome of discussions with a higher education provider about concerns identified by TEQSA meant that TEQSA did not need to take further action in light of the provider’s response.

Beyond the application context, paragraphs 134(1)(e) and (g) of the TEQSA Act confer functions which allow TEQSA to provide further information and guidance to the sector. Consistent with these paragraphs, TEQSA has developed and published a range of resources for higher education providers to assist in their ongoing development. These resources include guidance about specific elements of the Higher Education Standards Framework as well as resources designed to inform the development of good practice. The development of these resources has increased, with a greater emphasis on advice about best practice, as part of the preparation for the introduction of the 2015 Standards.

In relation to paragraph 134(1)(g), the first TEQSA conference in November 2016 provided further opportunities to improve the quality of higher education in Australia by offering a forum to discuss key developments in quality assurance and excellence in higher education. In early November TEQSA staff also presented a Discussion Paper and Toolkit on Quality Assurance of Online Education, part of an initiative funded by the Department of Education and Training to improve quality assurance of, and confidence in, online learning in the APEC region. TEQSA will continue to explore opportunities in this area – the establishment of a national regulatory and quality assurance agency under the TEQSA Act makes these opportunities possible.
TOR 3 - The extent to which the TEQSA Act has contributed to improved regulation

The TEQSA Act provides for an improved approach to the regulation of higher education in many ways. These include:

- the basic principles for regulation, which ensure that the exercise of powers under the TEQSA Act is risk reflective, proportionate and necessary;
- structured approaches to consultation with key stakeholders, including State and Territory Ministers, on the legislative framework and on key decisions by TEQSA;
- clearer opportunities for cooperation and information sharing with professional organisations and other government bodies in Australia and overseas.

As noted above, TEQSA was unable to access previous records on the regulation of higher education from some state and territory regulatory agencies. This restricted TEQSA’s capacity to assess the risks and quality of higher education providers on a nationally consistent basis. However with the passage of time, and as TEQSA’s work gave it a greater understanding of the main risks and quality issues associated with individual higher education providers, TEQSA’s approach evolved to provide for greater differentiation in the scope and intensity of assessments based on a provider’s compliance and risk profile. This evolution is consistent with the basic principles for regulation in Part 2 of the TEQSA Act.

The development of TEQSA’s approach in accordance with the TEQSA Act, particularly the basic principles for regulation in Part 2 of the TEQSA Act, has generally been met with approval. In the first TEQSA Stakeholder Survey, designed to provide an evidentiary base for TEQSA’s Regulator Performance Framework, a majority of Principal Contacts, Chief Executive Officers and Peak/Professional/Student bodies rated TEQSA’s performance as “good” or “excellent” against each indicator, with more than 80% of respondents in each category providing a rating of “good” or “excellent” overall. Indeed, the mere application of the Regulator Performance Framework to the regulation of higher education in Australia provides an improved platform for effective regulation. A copy of TEQSA’s Regulator Performance Framework Report for 2015-2016 is attached to this submission.

The TEQSA Act also provides a clearer mechanism for consultation on the legislative framework through subsection 168(2), which requires the HESP to consult with interested parties when performing its functions. The consultation on the development of the revised Higher Education Standards Framework involved over 100 meetings with and presentations to interested higher education providers and other stakeholders, 15 Panel Communiques distributed to a mailing list numbering approximately 1200, three formal Calls for Comment that received a total of 230 written submissions and, finally, a public information session on the full proposed revised Standards. This ensured that the revised Standards reflect broad input across the higher education sector.

The letter inviting a submission to this review seeks particular comment on estimates regarding the relative differences in the compliance costs between the current and past (pre-TEQSA Act) regulatory landscapes. The regulatory impact analysis undertaken with the introduction of the TEQSA Act includes analysis of the impact of the 2011 Standards framework and provides a basis for assessing the nature of the TEQSA Act’s contribution to a reduction in compliance costs. The Department of Education and Training assessed that a $2.538m per annum deregulatory saving was anticipated from the 2015 Standards. In the recent Stakeholder
Survey, more than 70% of provider principal contacts rated TEQSA’s measures to streamline regulatory processes to reduce administrative burden as “good” or “excellent”.

The 2015 Standards offer a number of opportunities for reduced compliance costs for providers. These include the following:

- The new standards are aligned with the processes of higher education provider operations and offer a framework for internal quality assurance by providers;
- The language is aligned with that of the sector and reduces interpretation barriers;
- The focus on the provision of publically available information by higher education providers will allow TEQSA to collect information directly from websites, avoiding the need for providers to submit this information in their applications.

In relation to the fee costs for providers, TEQSA understands that the fees charged by TEQSA involved a reduction in fees for some providers and an increase for others. A direct comparison of the fees charged by TEQSA with the fees charged by the State and Territory authorities is somewhat unhelpful as there are substantial differences in the fee structures and relevant legislative provisions. In particular:

- TEQSA has been required to operate on a cost recovery basis for most decision making functions. However, some State authorities charged only nominal amounts for the equivalent functions.

- As noted earlier in this submission, providers registered in one state were required to apply for registration if they wished to operate in another state. This required those providers to pay additional fees to operate in additional states.

- Many State authorities appear to have had annual registration charges in place in addition to the relevant application fees. There are doubts as to whether TEQSA could put similar arrangements in place without legislative amendments given the federal constitutional restrictions on the imposition of taxation.

- Many State authorities appear to have charged fees for the assessment of “major” or “material” change notifications. TEQSA does not charge such a fee.

- Providers approved to offer FEE-HELP were also required to be audited by AUQA, which charged fees additional to those charged by the relevant State/Territory authority. Registration with TEQSA involves a single fee for registration or course accreditation across Australia and (where relevant) for delivery overseas by an Australian provider.

- The State/Territory legislation provided for registration or course accreditation for a maximum of five years. The TEQSA Act provides for registration or course accreditation for up to seven years.
TOR 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*

TEQSA’s submission to the Senate Education and Employment Committee inquiry on the *Education Services for Overseas Students Amendment (Streamlining Regulation) Bill 2015* and *Education Services for Overseas Students (Registration Charges) Amendment (Streamlining Regulation) Bill 2015* expressed the view that the bills reflected many of TEQSA’s suggestions about the need to align TEQSA’s processes under the *Education Services for Overseas Students Act 2000* (ESOS Act) and the *Tertiary Education Quality and Standards Agency Act 2011* (TEQSA Act). The submission expressed confidence that the reforms proposed in the bills will provide for further regulatory efficiency in the sector and will continue to provide protections for international students. Those bills subsequently became law and TEQSA remains of the view that the bills substantially improved the capacity to streamline assessment processes.

TEQSA continues to work with the Department of Education and Training to ensure that subordinate legislation, such as the *National Code 2007*, takes a similar approach.

In relation to the *National Vocational Education and Training Regulator Act 2011*, it remains the position that both TEQSA and ASQA are responsible for regulating courses which lead to a Diploma, Advanced Diploma, Graduate Certificate and Graduate Diploma. TEQSA is working with ASQA and the Department of Education and Training to ensure appropriate clarity for the higher education and Vocational Education and Training (VET) sectors.

More generally, TEQSA is confident that TEQSA and ASQA have the capacity to ensure appropriate coordination of their respective functions. For instance, in 2014 TEQSA and ASQA undertook a pilot joint registration renewal process in relation to Think: Colleges Pty Ltd, which received positive feedback from the provider. TEQSA and ASQA will undertake a similar process with respect to Central Queensland University in 2017 and both agencies continue to explore further opportunities for cooperation. TEQSA considers that the TEQSA Act provides a satisfactory basis for this cooperation.

TEQSA’s principal concern with respect to the operation of the *Higher Education Support Act 2003* and the TEQSA Act has been to work with the Department of Education and Training to develop a single data collection for higher education. In 2016 responsibility for the Provider Information Request, a data collection under the TEQSA Act, transitioned to the Department of Education and Training. TEQSA and the Department continue to discuss opportunities to improve the timeliness of data sharing and the streamlining of collection processes.
TOR 5 - Whether there are amendments to the TEQSA Act or other changes that would enhance the Act’s impact or its administration

TEQSA has previously provided Deloitte Access Economics with a list of possible amendments to the TEQSA Act in relation to operational issues, the disclosure of information, the integrity of higher education awards and courses, definitional issues and internal review arrangements. TEQSA is happy to discuss or elaborate on any of those possible changes.
TOR 6 - Whether the required functions of the Higher Education Standards Panel are adequately reflected in the TEQSA Act.

TEQSA considers that the current provisions of the TEQSA Act provide a basis for the HESP to perform its role.