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

Supplementary submission by TEQSA

*December 2016*
Introduction

Background

TEQSA’s initial submission to this Review dealt with each of the terms of reference of the review. Following discussions between TEQSA and Deloitte Access Economics (Deloitte), TEQSA agreed to provide responses to a series of further questions which have arisen during consultations between Deloitte and other stakeholders. This supplementary submission:

- provides broader contextual background to the matters raised by Deloitte; and
- sets out TEQSA’s responses to the further questions provided to TEQSA.

Emerging themes in higher education regulation and quality assurance

The objects of the TEQSA Act reflect that Australian higher education exists in a competitive international market. It is therefore essential that the TEQSA Act, as well as the policy thinking behind the TEQSA Act, continues to engage with the emerging themes and policy challenges in international higher education, including international approaches to the regulation and quality assurance of higher education.

Three particular themes are worthy of note. First, the protection of students through a more “student-centred” approach to regulation is increasingly becoming a central concern of quality assurance agencies. The provision of clear information to students as the basis of informed student decision-making, a concern with the quality of the student experience regardless of the mode of delivery, the wish to ensure students are compensated or given acceptable alternatives in cases of course or provider failure, and the ever greater focus on outcomes in terms of employability and future earnings, are all aspects of this student-centredness. The Higher Education Standards Framework (Threshold Standards) 2015 reflects this theme, with the provisions being drafted to align with the student ‘life cycle’, clear sections on teaching and learning, and the provision of information by providers to students. The recommendations of the Higher Education Standards Panel (HESP) report on Admissions Transparency and the Government’s response to those recommendations also send powerful signals in the same direction.

Second, it is clear that there are increasing challenges to established patterns of higher education delivery, accreditation and credentialing posed by some of the more radical applications of on-line and technology-led learning. Agencies in many countries are beginning to think through how they will fulfil their remits and responsibilities in a world where students may be acquiring on-line content that crosses national boundaries (through Massive Open On-line Courses, or MOOCs - for example), that is not accredited or credentialled by a single provider and where recognition by employers may begin to overtake academic recognition as the most important factor for students. The rise of such “micro-credentialing” poses significant challenges: which entity is being quality-assured? From which jurisdiction should regulation be applied? Do the packages of accumulated learning amount to a recognised qualification? In TEQSA’s case, should the obligation to protect the interests of Australian HE students apply even when the students’ studies are not part of a recognised Australian qualification?

Third, there is an increasing focus on questions about how regulatory and quality assurance agencies may contribute to quality improvement or enhancement. The TEQSA Act is deliberately focused on providing external assurance of the achievement of threshold standards.
Indeed, the logic of a risk-reflective approach means that TEQSA’s resources and effort are all tilted in this direction. However, it is clear that many stakeholders have an increasing expectation that TEQSA contributes to the improvement of quality and standards rather than merely conducting an assessment against thresholds.

Particular aspects of these themes are considered in response to Deloitte’s questions in the following sections.
Questions and responses

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

Deloitte has asked:

1. What are TEQSA’s views regarding the extent to which the TEQSA Act has contributed to improved quality in the delivery of higher education?
2. Can you identify three examples of how the TEQSA Act has improved the quality of the delivery of higher education by one, some or all existing Australian universities?

TEQSA’s initial submission to this Review described three ways in which the TEQSA Act has contributed to improved quality in the delivery of higher education: (1) the development of a single clear and consistent national framework which articulates the standards that must be met by higher education providers and which facilitates the application of those standards for the purposes of a provider’s own internal quality assurance mechanisms, (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. This section concentrates on question 2 above.

The first example of quality improvement related to concerns about whether students at a campus of a particular university were receiving an experience of an equivalent quality to the one received by students at the main campus of that university. TEQSA identified particular concerns in relation to the academic leadership, academic quality assurance, learning facilities and student experiences. Following discussions with senior personnel from the university, TEQSA and the university agreed to arrangements by which the university would report to TEQSA on the measures it would put in place to address TEQSA’s concerns. A further review conducted after the receipt of the final report from the university indicated that TEQSA’s concerns had been substantially addressed.

A second example arose in relation to concerns about the processes for organisational reviews at a particular university. In assessing the university’s application for renewal of registration it became clear that the university’s cycle for reviewing its internal divisions had fallen into abeyance. This appeared to contribute to inconsistencies in the implementation of assessment policies and procedures (including the moderation of assessment), in the recording and assessment of suitability of staff qualifications and in the involvement of external stakeholders in course reviews. TEQSA and the university agreed on arrangements by which the university would provide progress reports addressing these issues and those reports indicate that there have been substantial improvements in the areas identified by TEQSA.

The third example involves TEQSA’s work on academic integrity. In 2014, following reports about allegations of contract cheating in the Fairfax media, Minister Pyne wrote to TEQSA and requested that TEQSA investigate the allegations. TEQSA’s report is available at http://www.teqsa.gov.au/sites/default/files/publication-documents/ReportOn AllegationsOfStudentMisconduct.pdf. The report deals with the specific responses received in relation to the allegations, examples of broader measures to address academic integrity issues and research and other resources in relation to best practice in academic integrity. Since publishing that report TEQSA has commissioned further research from a recognised expert in academic integrity which, in turn, has informed guidance published
about this issue. A copy of the guidance note is available at http://teqsa.gov.au/sites/default/files/GuidanceNote_AcademicIntegrity1.0.pdf. Feedback received by TEQSA has indicated that this work has helped inform the ongoing improvement of academic integrity processes and practices at a number of higher education providers.

Deloitte has also asked:

3. Should TEQSA be consulted in the development stage rather than when a draft has been developed by the HESP? To what extent was TEQSA involved in the development of the Higher Education Standards Framework (Threshold Standards) 2015?
4. Whether TEQSA sees a role for Teaching and Learning Standards, Research Standards and/or Information Standards beyond the domains in the Higher Education Standards Framework (Threshold Standards) 2015? If not, should the TEQSA Act be amended accordingly?

TEQSA’s view is that it is appropriate that TEQSA be consulted throughout the development of revised draft standards and that the TEQSA Act currently provides an appropriate basis for this consultation. TEQSA Commissioners attended meetings of the HESP during the development of the revised higher education standards and TEQSA’s Commissioners and staff held regular discussions with the panel about the development of those standards.

Deloitte also asks whether it remains necessary for the TEQSA Act to provide for the making of the standards specified in paragraphs 58(1)(f) to (g) and in subsection 58(2). The final draft higher education standards framework prepared by the HESP was prepared on the basis that there would be no distinction between the categories of standards in section 58, though the HESP provided advice to TEQSA about the application of the framework which included guidance. The HESP also proposed the removal of the distinction between Threshold Standards and other (non-Threshold) standards, with all standards capable of being used for regulatory and quality assurance purposes.

TEQSA considers that the HESP’s proposed approach is a sensible one and that, if the opportunity exists, amendments should be made to the TEQSA Act so as to give effect to the HESP’s proposed approach. TEQSA notes that under this approach the framework would continue to deal with important issues such as teaching and learning, information and research, notwithstanding that this would not occur with standards bearing these titles as currently contemplated in paragraphs 58(1)(f) to (g) and subsection 58(2) of the TEQSA Act. TEQSA would be happy to discuss the nature of amendments which may be required to give effect to this proposal.

Ministerial Direction No. 2 of 2013

5. Does requirement for TEQSA to “only [work] on sectoral quality assessment activities if TEQSA has surplus resources after fully achieving” its “key activities” regarding provider registration and re-registration, course accreditation and re-accreditation unnecessarily inhibit TEQSA’s capacity to effectively perform its work?
6. If so, if the restriction were lifted, under what circumstances would TEQSA undertake quality assessment and improvement activities?
7. If there is no willingness to overturn the policy that lies behind the Ministerial Direction, should section 60 and sub-paragraph 134(1)(c)(i) of the TEQSA Act be amended to bring the TEQSA Act into line with the Ministerial Direction by formally putting an end to TEQSA’s power to conduct quality (including thematic) assessments?
8. What would TEQSA’s attitude be to the provisions being amended to permit TEQSA to undertake quality (including thematic) assessments when requested by the Minister?

9. What role should TEQSA play in assuring quality in the sector beyond its regulation against the Threshold Standards? If it is not a direct role advising on matters of quality, can and should the TEQSA Act or TEQSA itself help facilitate continuous improvement?

In TEQSA’s view the answer to question 5 above is yes. Sectoral quality improvement activities are an important way in which TEQSA has moved to reduce the burden on higher education providers by shifting focus away from cyclical assessment processes and towards a greater emphasis on monitoring, guidance, and risk-based enforcement. Quality assessment and improvement should be regarded as an integrated dimension of effective regulation and quality assurance. Seen in this light, measures which reduce TEQSA’s capacity to use the powers in the TEQSA Act also undermine TEQSA’s capacity to undertake effective regulation and quality assurance. Further, TEQSA considers that the ongoing presence of the direction:

- may undermine confidence in the regulation and quality assurance of Australian higher education, inhibiting the capacity of the TEQSA Act to contribute to the protection and enhancement of the reputation of Australian higher education;
- may inhibit TEQSA’s capacity to meet the Minister’s expectations, including in relation to work such as the review of academic integrity in light of the allegations about contract cheating (described above) and the implementation of the recommendation of the report of the HESP on admissions transparency.

If this restriction were lifted, TEQSA anticipates that any work on quality assessments would focus on systemic risks. The examples in the previous dot point illustrate the kinds of risks which could usefully be the subject of this work. Another topic which has been publically canvassed as being a systemic risk in Australian higher education is the prevalence of, causes of and effective responses to student attrition. TEQSA anticipates that work to address systemic risks would be undertaken in a consultative and collaborative way, drawing on examples of good practice in Australia and abroad as a means to inform providers about the approaches taken to deal with these risks. TEQSA considers that its oversight of all Australian higher education, as well as its connections with international regulatory and quality assurance bodies, mean that TEQSA is well placed to perform this work. The basic principles for regulation also ensure that there are safeguards to ensure that this work reflects the nature of risks in the higher education sector.

Consistent with the above, TEQSA does not consider that there should be any amendments to section 60 or subparagraph 134(1)(c)(i) of the TEQSA Act.

The responses to the other questions provide some indication of TEQSA’s response to question 9. As noted above, the Threshold Standards are explicitly designed to facilitate the effective operation of a provider’s own internal quality assurance mechanisms and thereby to facilitate continuous improvement. TEQSA considers that its principal contribution to a discussion about issues of quality would occur by facilitating the discussion and dissemination of information about risks to quality, responses to those risks and emerging knowledge about those risks. This reflects the way in which TEQSA’s functions are articulated in section 134 of the TEQSA Act, including paragraph 134(1)(e).
Innovation and future trends in higher education

Deloitte has asked:

10. To what extent has TEQSA considered the regulation of, or the regulatory framework for, activities such as badging, micro-credentialing and massive open online courses?
11. What changes to the TEQSA Act would be required to facilitate regulation of this kind?

As noted above, the emerging issues in relation to online education and micro-credentialing represent one of the key developments in global higher education. TEQSA has been considering the increasing importance of online learning and other technology-enhanced learning in various ways, including:

- The development of a draft guidance note on technology-enhanced learning, available at http://teqsa.gov.au/sites/default/files/GuidanceNote_Technology-EnhancedLearning1.0.pdf, which draws on materials prepared by the Australian Council on Open, Distance and e-Learning (ACODE) and the International Association for Distance Learning;
- Hosting a discussion at the 2016 TEQSA Conference, titled Innovate/Create/Engage, which explored the way in which Australian higher education providers are considering these issues.

Given the pace of development in this area, it is important that any expansion of regulation balances the need to protect Australia’s reputation for quality higher education with the need to encourage innovation in the delivery of higher education. Any legislative changes would also need to be framed in the context of the existing legislation which regulates the provision of education, including the Higher Education Support Act 2003, the Education Services for Overseas Students Act 2000 and the National Vocational Education and Training Regulator Act 2011.

While it may be premature to consider specific changes to the TEQSA Act, given the importance of further consultations and discussions about the impact of any changes, TEQSA is aware that other jurisdictions have developed innovative approaches to these issues. For instance, the Japanese National Institute for Academic Degrees and Quality Enhancement of Higher Education (NIAD-QE) is authorised to award degrees to individuals recognised as having the same academic ability as those who have graduated from a university undergraduate program or graduate school. The United Kingdom Quality Assurance Agency is responsible for licensing Access Validating Agencies to approve Access to Higher Education courses, which prepare students for study at degree level. It is important that Australia continues to engage with, and learn from, global approaches to these emerging issues. More generally, any amendments to the TEQSA Act should facilitate, rather than hinder, the consideration of and responses to these emerging issues, particularly the changing demands these issues may place on the discharge of the Agency’s key functions of registration and accreditation.
Regulatory principles

Deloitte has asked:

12. To what extent is it reasonable to have the principles articulated in the TEQSA Act in their current form and could they benefit from any re-drafting?

TEQSA considers that the form in which the basic principles for regulation are currently expressed in Part 2 of the TEQSA Act is appropriate.

Impact on non-university higher education providers (NUHEPs)

Deloitte has asked:

13. It has been asserted that, even bearing in mind the basic principles for regulation, the TEQSA Act has a disproportionate impact on NUHEPs when compared with the impact of the Act on universities and it has been suggested that this has the effect of stifling competition and innovation. The time taken for course accreditation and what is required to achieve self-accrediting status are referred to as evidence of this. Do you have a view on this statement?

14. A key characteristic of the TEQSA Act is the inclusion of statutory timeframes. It has been suggested that the inclusion of these timeframes leads, more often than not, to the utilisation of the maximum time limit before decisions are made. To what extent does TEQSA agree with this statement?

15. Deloitte was told that no organisation has achieved the ‘University College’ categorisation and that there is confusion around it. Can you comment on this?

16. It has been suggested that the Threshold Standards are drafted with a traditional university operating model in mind, thereby inadvertently disadvantaging NUHEPs. To what extent does TEQSA agree with this statement? Does a standards framework cultivate and support a diverse pool of higher education providers?

17. There may be a situation where a reputable NUHEP registered under the TEQSA Act experiences a change of ownership that leads to that NUHEP operating less reputably. Should the TEQSA Act include a provision that, if there is a change of ownership, a review by TEQSA is triggered?

TEQSA is aware that a number of NUHEPs (principally in the private for-profit grouping) have raised concerns about the timeliness of TEQSA’s decisions and the extent of the requirements to obtain self-accrediting authority. In its 2015-2016 Regulator Performance Framework Report TEQSA:

“acknowledged that there are a range of learnings for TEQSA to reflect upon in the stakeholder survey feedback, especially in relation to

- timeliness of decision making
- continued streamlining
- ensuring that actions are proportionate to risk
- more effective consultation
- provision of sector updates, support materials and best practice examples
- consultation with private providers

TEQSA will develop initiatives for approval by the TEQSA Accountable Authority. These initiatives will inform the TEQSA Corporate Plan 2017-2021.”
As noted in TEQSA’s previous submission, data from the TEQSA Stakeholder Survey indicates that 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.

Initiatives already undertaken by TEQSA include:

- holding a series of provider roundtables in capital cities to discuss TEQSA’s implementation of the streamlined assessment approaches introduced during 2015, and to outline and discuss TEQSA’s approach to implementing the 2015 Higher Education Standards Framework;
- negotiating Memoranda of Understanding (MOUs) with the principal peak bodies representing higher education providers to outline arrangements for information sharing and ongoing dialogue on issues of mutual interest; and
- developing further guidance about TEQSA’s processes for applying for a change of registration category and for self-accrediting authority.

The 2015 Higher Education Standards Framework includes specific provision for self-accrediting authority to be sought for nominated courses of study rather than on a whole of institution basis, which provides more flexibility than the current criteria for authorising self-accrediting authority. However it is also important to note that the Provider Category Standards and the Criteria for Authorising Self-Accrediting authority are both determined by the Minister for Education and Training on advice from the HESP. The current Provider Category Standards largely reflect the former National Protocols for Higher Education Approval Processes, approved in 2007. It is also correct that no provider has been registered in the Australian University College Category since the passage of the TEQSA Act. TEQSA considers that it would be useful for the HESP to reflect on issues associated with the current Provider Category Standards with a view to considering whether changes are necessary to reflect the nature of Australia’s diverse higher education sector.

TEQSA does not agree that statutory timeframes lead to the utilisation of the maximum statutory period before a decision is made. Indeed, in both 2014-15 and 2015-16, the average time taken to make a decision on applications for initial registration or initial accreditation, for which statutory timeframes apply, was equal to or less than the average time taken to make a decision on applications for renewal of registration or accreditation for which there are no statutory timeframes. TEQSA makes all decisions as quickly as is practicable, having regard to the nature of the evidence and issues, the need to afford procedural fairness prior to a decision and the resources available to TEQSA.

TEQSA considers that the diverse range of Australian higher education providers tends to suggest that the current Higher Education Standards Framework does not impose a “one size fits all” approach to the governance and delivery of higher education. Australian higher education is delivered by a wide range of providers including large public universities, private business colleges, professional associations, faith-based institutions and other discipline-specific providers. Further, the 2015 Higher Education Standards are specifically designed to incorporate the flexibility to provide for a wide range of different institutions while also ensuring that all institutions consistently meet the necessary standards to deliver a quality higher education experience.

In the scenario described in question 17 TEQSA considers that the relevant provider would be required to notify TEQSA of the ownership change pursuant to section 29 of the TEQSA Act, relating to material changes. TEQSA would then consider the information received and

Ministerial Directions

Deloitte has asked:

18. Is the difference between section 136 of the TEQSA Act (which provides that the Minister may “give directions to TEQSA in relation to the performance of its function and the exercise of its powers” and that such directions must be of a “general nature only”) and section 155 of the TEQSA Act (which permits the Minister to give “written directions to the Chief Executive Officer about the performance of his or her functions and the exercise of his or her powers” but which does not specify that such directions must be of a general nature) desirable?

19. Should the advice giving function be maintained and formally transferred to the HESP? If so, should the function be included in the TEQSA Act or in a new Ministerial Direction?

The enabling legislation for other Commonwealth regulators (such as the Australian Securities and Investments Commission, the Australian Competition and Consumer Commission and the Australian Communications and Media Authority) generally provides that directions would be made to the body in which regulatory powers are vested. Even in relation to the Australian Skills Quality Authority (ASQA), whose Chief Commissioner/CEO is subject to directions under section 181 of the National Vocational Education and Training Regulator Act 2011 (NVETR Act), the Chief Commissioner/CEO is the accountable authority of ASQA for the purposes of the Public Governance, Performance and Accountability Act 2013. TEQSA is unaware of any legislation which provides for ministerial direction in relation to the CEO of an agency who is neither the accountable authority of that agency nor the person in whom regulatory powers are vested. On this basis, the purpose for section 155 of the TEQSA Act is not clear to TEQSA.

TEQSA considers that it is not necessary to retain the requirement in Ministerial Direction No 2 of 2013 to consult broadly across the sector, including to seek advice from particular bodies, and for the CEO to perform his or her functions consistent with that advice. TEQSA considers that the established processes for consultation and dialogue between TEQSA and the HESP, as well as the arrangements for consultation across the higher education sector, are working effectively. Further, given that the HESP has particular responsibilities (including the preparation of draft higher education standards and the external validation of TEQSA’s Regulator Performance Framework report) TEQSA considers that it would be preferable to ensure that both TEQSA and HESP may continue to independently perform their functions.

Other questions

Deloitte has asked:

20. What are TEQSA’s views on how to achieve greater clarity for the higher education and vocational education and training (VET) sectors in relation to Diplomas, Advanced Diplomas, Graduate Certificates and Graduate Diplomas?

21. From a policy perspective, should the TEQSA Act apply to higher education courses:
   a. Delivered by an Australian entity from an Australian campus;
   b. Delivered by an Australian entity at a campus outside Australia where the provider has no Australian campus or office;
c. Delivered by an Australian entity online from a campus or office outside Australia to students in Australia where the provider has no Australian campus or office;
d. Delivered by an overseas entity from an Australian campus or office to students in Australia;
e. Delivered by an overseas entity at a campus outside Australia where the provider has no Australian campus or office;
f. Delivered by an overseas entity online from a campus or office outside Australia to students in Australia where the provider has no Australian campus or office?

TEQSA considers that the present framework for dealing with the courses listed in question 20, under which those courses may be accredited by either TEQSA or ASQA, creates substantial uncertainty for providers, students, employers and other stakeholders. In particular, TEQSA’s understanding is that there is no basis on which either TEQSA or ASQA can refuse to consider an application for such a course once it has been made, even where it appears clear that the course would be more appropriately considered by the other agency. TEQSA considers that the appropriate solution would involve either:

- Amending the Australian Qualifications Framework to reinstate the distinction between a VET AQF Level 8 course and a higher education AQF level 8 course; or
- Amending the NVETR Act and the TEQSA Act to confer responsibility for accrediting all courses at level 8 and above on TEQSA.

While TEQSA continues to work with ASQA and the Department of Education and Training to address these issues, TEQSA considers that the necessary certainty would be difficult to provide without legislative amendments of the kind described above.

TEQSA considers that the TEQSA Act should apply to all higher education awards offered by Australian higher education providers and to all higher education awards offered by overseas providers for courses delivered wholly or mainly from Australian premises. This position reflects the current form of the TEQSA Act.

More difficult questions arise in cases where a higher education course is delivered outside Australia (or from premises outside Australia to students in Australia) by an overseas entity. As noted above, the emphasis on a student-centric approach is one of the key recent developments in international higher education quality assurance. Further, TEQSA’s current functions in section 134 of the TEQSA Act cover some of this activity through:

- The collection, analysis, interpretation and dissemination of information relating to quality assurance practice, and quality improvement, in higher education;
- Conducting training to improve the quality of higher education; and
- Cooperating with TEQSA’s counterparts in other countries.

Some opportunities may exist to allow TEQSA to play a greater role in these areas. This could include:

- Creating an information centre with information about options for studying overseas, the interaction between study in Australia and overseas and the recognition of overseas qualifications in Australia. While some of this information is provided by the Department of Education and Training and by state qualifications recognition units, this could benefit from a more central approach such as the one adopted by the United Kingdom National Recognition Information Centre.
• Permitting TEQSA to support the development of quality assurance overseas by assisting in the development and implementation of domestic quality assurance frameworks in other countries. For instance, the Hong Kong Council for Accreditation of Academic and Vocational Qualifications has undertaken a range of projects in other jurisdictions to assist in the development of quality assurance frameworks and the reviews of particular institutions.

• Developing TEQSA’s cooperation with international agencies to provide for publication of more detailed information about the activities of other agencies, including information for Australian students on developments in countries which are the subject of TEQSA’s international cooperative arrangements.

• Providing an Australian forum for the dissemination of information about global quality assurance and quality improvement activities in higher education.

TEQSA would welcome the opportunity to explore the way in which the TEQSA Act might facilitate these activities.