



The Group of Eight Limited
ABN 98 089 687 990

PO Box 6229
O'Connor ACT 2602
Lvl 2, Group of Eight House
101 Northbourne Avenue
Turner ACT 2612
Australia

t: +61 (0)2 6175 0700
www.go8.edu.au

14 November 2016

E/Professor Sally Walker, Principal
Mr Lachlan Smirl, Partner
Deloitte Access Economics
GPO Box 78
MELBOURNE VIC 3001
E: teqsaactreview@deloitte.com.au

Dear E/Professor Walker and Mr Smirl

Go8 Response – Consultation: review of the *Tertiary Education and Quality Standards Agency Act 2011*

The Group of Eight (Go8) supports a review of the *Tertiary Education Quality and Standards Agency Act 2011* (TEQSA Act), while noting that undertaking the review is a requirement of Section 203 of the Act.

Please note that the comments and recommendations below represent the views of the Go8 network; member universities may also make their own, more detailed submissions.

This mandatory review of the TEQSA Act is a welcome and timely examination of a national regulatory framework for higher education that has existed since the Act came into effect in mid-2011. The Go8 notes this review is specifically framed to exclude the operations and governance of TEQSA and the exercise of its powers.

Given that the governance, operations and exercise of TEQSA's powers are set out in the TEQSA Act, in many respects the organisation and the legislation are intertwined to the extent that a meaningful examination of one cannot be performed without looking closely at the other.

The Go8 welcomes the change in TEQSA's approach to managing the regulatory environment over the last five years from what began as a relatively hands on, intensive approach, to one that is more risk-based and proportionate.

This demonstrates the growing maturity of TEQSA as an organisation. At the same time, there may be a perception that, on occasion, TEQSA has swung too far in its risk-based approach, and the Go8 acknowledges the challenges faced by TEQSA in finding the most appropriate balance.

With the benefit of five years' operating in this regulatory environment, the Go8 makes the following key observations and recommendations:

1. Action should be taken without further delay to address the ongoing regulatory overlap across legislative arrangements affecting the sector.



2. A tension between TEQSA's quality assurance role and regulatory functions is becoming increasingly evident.
3. The operation and functions of TEQSA / TEQSA Commissioners and the functions of the Higher Education Standards Panel would benefit from clarification and better delineation.
4. The improvement in the risk appetite and risk intelligence of the national regulator has been a significant feature of improvements to the national framework.
5. The TEQSA Act should reflect the primacy of TEQSA's role in course accreditation.
6. The move towards a cooperative regulatory model within the TEQSA Act approach should continue and not remain static.

The Go8 is pleased to contribute to this review and we look forward to working with Government and fellow stakeholders to ensure continued improvements and streamlining of the quality assurance and regulatory environment for higher education in Australia.

Kind regards

A handwritten signature in blue ink, appearing to read "V. Thomson", with a long horizontal flourish extending to the right.

Vicki Thomson
Chief Executive

Background: Go8 recommendations – Review of *Tertiary Education Quality and Standards Agency Act 2011*

Against the background of these comments, the Go8 acknowledges the positive role TEQSA has played since its inception in the Australian higher education sector.

While the Go8 readily recognises the benefits inherent in the move to a national regulatory framework for higher education, a less desirable feature of that framework remains the not insignificant level of regulation experienced by participants. These have been acknowledged through successive reviews and examinations of the sector. Of these, the 2013 Review of Higher Education Regulation highlighted a number of issues for action, several of which remain unresolved¹.

The levels and layers of regulation applied to universities across the various jurisdictions and at the different levels in which they operate as well as at the national level that is problematic for effective and efficient operation. This overlay is at odds with a national approach to the regulation of the sector.

Similarly, in implementation there is evident regulatory overlap at the intersect of the TEQSA Act, the *National Vocational Education and Training Regulator Act 2011* (NVETR Act), and the *Education Services for Overseas Students Act 2000* (ESOS Act). Overlap across the TEQSA Act and the ESOS Act is more evident, particularly in relation to the instruments under the ESOS Act.

Despite recent efforts to streamline and harmonise arrangements across these frameworks, particularly in relation the alignment of registration arrangements under the ESOS Act which has been welcomed, much has been left either incomplete or has not yet commenced.

In particular, the lack of any real progress on amendments to streamline the National Code of Practice for Providers of Education and Training for Overseas Students 2007, a core part of the ESOS framework, has been consistently expressed by the sector for several years and remains a concern.

Whether the implementation of the TEQSA Act — in itself — has meaningfully contributed to improved quality of the sector over the past five years may be open to question.

This is a complex proposition and more so when attempting to divorce it from the operations of TEQSA itself. It might be said that as TEQSA implements a more mature risk-based program that is based on evidentiary, established and well-developed risk profiles, the quality of outcomes improves.

Similarly, a proposition that the implementation of the TEQSA Act itself, has driven improvements in the quality of delivery of higher education is contestable. Part 2 of the TEQSA Act (Basic Principles for Regulation) is a helpful guide to the operation of the framework, although having been in operation for five years these principles could quite possibly be refreshed.

¹ Lee Dow AO, Prof K.; Braithwaite, Prof V.; Review of Higher Education Regulation, 2013, Australian Government; <https://docs.education.gov.au/system/files/doc/other/finalreviewreport.pdf>

The underlying scope for and quality of risk appetite, risk identification and a proactive, mature regulatory culture are factors that can drive quality enhancement. While these are not present in the TEQSA Act, they are features of a mature regulatory environment that can deliver sector-wide improvements.

The regulatory and compliance arrangements across the tertiary sector vary considerably. It would be of significant benefit to the sector if regulatory frameworks encompassed by the TEQSA Act, the NVETR Act and the ESOS Act embraced standardised regulatory and compliance frameworks. This would not only benefit those providers that delivered to international students (all universities for example) but also a range of other providers that deliver programs in different sectors.

The Go8 recommends that:

- **Action be taken to address areas of regulatory overlap across the TEQSA Act, NVETR Act and the ESOS Act and their supporting instruments—notably the National Code under ESOS Act—without delay. This should also encompass work to harmonise regulatory and compliance arrangements across the tertiary sector.**

To a certain degree the TEQSA Act contains a central tension. That is, there is a tension at the core of the TEQSA Act between the roles of the Agency in prosecuting its quality assurance and its role in performing regulatory functions.

In some respects, these are inconsistent and sometimes competing roles. The important role that quality enhancement plays in a sector such as ours should not be applied uniformly and in all cases across all provider types. With 178 higher education providers to regulate, TEQSA has a challenging task in identifying and working with those providers that have mature enough processes and procedures to benefit from enhancement activities. A substantial number of providers would perhaps benefit, as would the sector and Australia's reputation, from firm and transparent regulatory actions in cases where those robust processes are not evident.

The Go8 continues to support TEQSA having a strong focus on quality assurance/enhancement as a step in the overall regulatory framework. While supporting this core purpose, the Go8 would advocate for what might be termed the '*legacy quality assurance functions*' of TEQSA to be clearly delineated in order to ensure the national regulator maintains the flexibility to pursue regulatory action. In that context, the expectations of quality assurance activity could also be clarified within the legislative framework.

Ultimately, however, TEQSA's primary focus should be directed at regulation, while still noting the importance of the consultative process undertaken with the sector for any quality enhancement-related activities.

The Go8 recommends that:

- **In articulating and describing the quality assurance functions of TEQSA, the TEQSA Act should clearly delineate the regulatory functions TEQSA is charged with and environment in which those functions are performed.**

Similarly, the TEQSA Act would benefit significantly from greater clarity with respect to the role and operation of the HESP. In particular, the operation of the Panel and that of the Commission and the strict functions of

both can become slightly blurred in practice. A clearer delineation is needed. As an overarching principle, the very clear separation of the functions and powers between the Minister, the Panel and TEQSA is fundamental to the robust operation of the legislative framework and should be protected.

Currently, the TEQSA Act provides that both TEQSA and the HESP are able to advise the Minister with respect to the Higher Education Standards Framework. Providing greater clarity in the roles of the two bodies in terms of the setting of standards for higher education, the regulatory role of TEQSA and potential 'thematic reviews' that explore contemporary, sector-wide standards issues (should these be deemed to be appropriate functions for either or both bodies) would be very beneficial. While important, this would need to be approached with a degree of caution so as not to release unintended consequences in drafting.

The Go8 recommends that:

- **The TEQSA Act be amended to clarify the functions, role and scope of the Higher Education Standards Panel.**

The TEQSA Act should be clearer in reflecting the primacy of TEQSA's role in dealing with course accreditation. The Go8 acknowledges the important role played by professional associations in this area, but it is important to be very clear that those organisations do not have a role to play in assessing university courses against the Australian Qualifications Framework. While examples where that may happen may not be commonplace, there have been examples of the incursion of professional associations into areas of TEQSA's core responsibility.

In our submission to the recent *Mapping of Professional Accreditation in the Context of the Higher Education Standards Framework*, the Go8 noted that it is important that '*professional accreditation standards and arrangements not unnecessarily constrain the ability and capacity of universities to decide either how courses are designed or delivered or how graduate outcomes are attained.*'

There is a real regulatory burden at the intersection of the Standards Framework and those arrangements under the purview of professional accreditation bodies and this is not a form of tacit consent for dual regulatory burden on universities.

It is also important to note these issues in the context of the proliferation of professional accreditation bodies. In the context of that submission the Go8 recommended that:

'Professional accreditation must not encroach on discipline development, internal quality review, the work of the Tertiary Education Quality and Standards Agency and the operation of the Higher Education Standards Framework.' This can be adequately reflected in the TEQSA Act to remove doubt regarding activity and responsibility.

The Go8 recommends that:

The TEQSA Act clearly identify the primacy of TEQSA's role in course accreditation and that TEQSA has the ability to monitor and take appropriate action in relation to any body outside the accreditation process that may act