



Postgraduate Student Concerns Relating to the Draft Tertiary Education Quality and Standards Agency (TEQSA) Legislation

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The Sydney University Postgraduate Representative Association (**SUPRA**) is the representative body for the approximately 17,000 postgraduate students at the University of Sydney. We offer a free and professional casework service that attracted more than 500 cases a 2010, and a legal service that offered more than 400 instances of advice and/or cases in the same period. We engage in advocacy across the governance structure of the University, and comprehensive support for postgraduate students at the University. On the basis of our experience with case work, our advocacy for students, and our involvement in University governance, we offer the following comments in relation to the draft legislation for the establishment of the Tertiary Education Quality and Standards Agency (**TEQSA**).

SUPRA is in support of a national regulatory body for higher education which upholds standards for quality in the delivery of education. We feel that the role of TEQSA could be quite important for students in that students are the main stakeholders affected by poor quality in educational institutions, while their studies are being undertaken, as well as after graduation. Furthermore, upholding quality standards is crucial to protecting community health, safety and wellbeing, as many of society's skilled and professional workers in sensitive fields such as engineering, health, and community welfare are trained in higher education institutions.

SUPRA feels that the draft legislation for the establishment of TEQSA could be further improved by additions and clarifications of the following:

Part 2

Clause 15 describes the Principle of reflecting risk. SUPRA is aware of the risk associated with private education providers, having worked closely with students whose private education provider collapsed financially in the course of 2009. However, SUPRA is concerned that the status of self-accrediting universities will be considered exempt from many of the oversight functions of TEQSA due simply to their size and scale inhibiting the type of financial collapse seen in smaller providers.

All of the risks associated with an entity's history, scholarship, teaching, research, student experiences, compliance with the Threshold Standards, and internal quality assurance mechanisms ought to be weighted equally with risks associated with financial collapse. As such, universities and larger providers are not necessarily at a lower risk of non-compliance with the Provider Standards than smaller, private providers. SUPRA suggests that, in fact, universities may be at a greater risk of non-compliance with the Provider Standards in some areas, particularly due to their size and scale. SUPRA has assisted students with many cases of bullying, harassment and discrimination by University staff, which SUPRA feels may be more risky in academic environments in which making complaints can have future career implications. Furthermore, larger-scale administrative processes may have a greater discriminatory effect on students in larger organisations.

SUPRA recommends that Clause 16 be amended to include the statement “all forms of risk shall be weighted equally and without prejudice to the type of institution”.

Part 3 Division 5

This section relates to an application by a higher education provider (HEP) for self-accrediting status. Few other references to self-accrediting status are made in the draft legislation, and it is unclear as to the difference in regulatory functions of TEQSA with respect to self-accrediting and non self-accrediting providers.

Universities have expressed considerable concern over the restriction of universities' autonomy since the announcement of a national higher education regulatory body¹. While SUPRA recognises that quality assurance of course offerings by universities is underwritten by robust quality assurance, governance and peer review mechanisms within universities, and that duplication of these functions would only further burden students and university staff, SUPRA feels that the need for oversight of universities may be overlooked in the effort to respect universities' autonomy and academic freedom.

SUPRA recommends that all investigative powers, remedies and penalties be equally applicable to self-accrediting HEPs and non self-accrediting HEPs.

Parts 5 and 6

These parts describe the Higher Education Standards Framework and the powers of TEQSA to investigate HEPs, respectively. SUPRA supports these investigative powers, however, recommends that TEQSA's role with respect to students be clarified and student concerns be treated as a vital aspect of investigations of HEP compliance. The grounds on which an investigation can be carried out need to be specified, and students need options to raise concerns and complaints directly with TEQSA relating to a provider's compliance with the Provider Standards.

¹ Coaldrake, Peter (2011) *Statement regarding TEQSA legislation*, Universities Australia policy statement, 24 February, 2011, available at: <http://www.universitiesaustralia.edu.au/page/578/policy--advocacy/teqsa/> (last accessed: 04/03/2011)

SUPRA feels that this function is of vital importance in assuring quality and providing guarantees to students in a strong higher education system. The explicit inclusion of such functions can only boost confidence in Australia's higher education system, and support the growth of higher education. The provision for students to approach TEQSA directly also ensures that robust oversight is present as the university system grows due to the deregulation of Commonwealth-supported places and Federal Government targets for equity participation.

SUPRA recommends that TEQSA:

- (a) has the power to investigate student complaints;**
- (b) provides mechanisms for students to raise complaints and concerns directly with TEQSA; and**
- (c) provides information to students about raising complaints and concerns about their higher education provider;**

AND THAT:

- (i) the capacity to make complaints be extended to all students enrolled in courses provided by registered higher education providers;**
- (ii) all complaints are handled in a confidential and procedurally fair manner.**

Part 5 Division 2

SUPRA supports the power of TEQSA to review and examine HEPs operations in relation to quality and systemic issues. SUPRA feels it is important that all HEPs are accountable for the quality of their courses. However, SUPRA feels that TEQSA ought also to have oversight functions over academic and administrative processes not related to particular courses, and that equity and diversity within providers ought also to be matters which TEQSA may investigate. Many processes within universities are not related to particular courses, but to broader policies and arrangements, such as the handling of academic dishonesty and plagiarism by particular faculties and academic divisions, but affect the overall quality of higher education provided by the institution. Explicit reference to these matters would remove ambiguity regarding the matters over which TEQSA has oversight.

SUPRA recommends that the following sub-clauses be inserted into Clause 60 to address these matters:

- **“assess the equitability of, and access to, higher education with a provider with respect to Aboriginal and Torres Strait Islander persons, women, people with disabilities, and international students”;** and
- **“assess whether there are systemic issues relating to particular institutional processes within providers of accredited courses of study or regulated higher education awards”.**

Parts 7 and 8

These parts relate to the power of TEQSA to enforce the Provider Standards and other requirements of registration, and the structure, functions and powers of TEQSA. SUPRA is of the opinion that students and the higher education sector as a whole will benefit most from a national regulator which has robust enforcement powers which are not limited to negative penalties, but which also include remedies and substantive actions. Compliance

with the Act in real terms is not limited to a HEP refraining from falsely representing itself as a particular entity, or providing unaccredited courses, but substantive compliance relates to providing quality higher education. To this end, TEQSA is explicitly empowered to:

- enforce undertakings provided by HEPs in writing to TEQSA (Part 7, Division 3);
- to “advise and make recommendations to the Minister on matters relating to the quality or regulation of higher education providers” (Part 8, Clause 134, subclause (d)); and
- to “advise and make recommendations to a higher education provider on matters relating to the Threshold Standards, if requested by the provider in the approved form” (Part 8, Clause 134, subclause (f)).

SUPRA is of the opinion that these powers are too limited, and that TEQSA ought to have powers to advise and make recommendations to HEPs without explicit request, and to mandate and enforce particular actions relating to compliance with the Act and quality higher education provision without an acceptance of that undertaking by a HEP being provided. SUPRA recommends that powers to advise and make recommendations to HEPs, and to enforce particular courses of action upon HEPs, be tightly defined in the legislation so as to limit the abuse of such powers.

However, for TEQSA to be effective at monitoring and regulating HEPs, the ability to enforce particular actions in relation to compliance is essential. Furthermore, the requirement that TEQSA engage a HEP in legal action before particular actions are enforced would violate the principle of regulatory necessity (Part 2, Clause 14) and lead to an excessive use of resources in legal actions. Judicial oversight of such decisions would remain, through existing administrative law provisions, should a HEP challenge an action mandated by TEQSA.

SUPRA recommends that “if requested by the provider in the approved form” be deleted from Clause 134, subclause (f) of the legislation.

SUPRA recommends that TEQSA’s powers in relation to enforcement of actions be extended to requiring HEPs to undertake particular actions in relation to compliance with the Act, or maintaining quality in the provision of higher education.