Australian Government
Tertiary Education Quality and Standards Agency

Fees and charges proposal for cost recovery for quality assurance and regulation of higher education

Consultation paper response template

Please complete and return your submission to the cost recovery consultation team at: consultation@teqsa.gov.au by 5:00pm AEST Thursday 3 June 2021.

Submission cover sheet

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I consent to this submission being published in full on the TEQSA website.

Signature: Kadi Taylor

Date: **3 June 2021**

Consultation response

Please refer to the submission guidelines as outlined in Section 7 (p. 28) of the Consultation paper.

Introduction

Navitas fully endorses the views expressed by our sector peak body Independent Higher Education Australia (IHEA) regarding its overarching opposition to the imposition of full cost recovery for the regulation of quality in Australian higher education from 1 January 2022.

We, like IHEA, believe this policy decision by the Australian Government will have serious implications for the independent higher education sector primarily due to:

- massive increases in operational costs for independent providers, particularly small and niche providers;
- impact on students through increasing student tuition fees caused by rising operational costs, and increased student debt as the cost of the quality regulator ultimately flows on to HELP Loans;
- an imbalance in the impacts of cost recovery on the independent sector given it has only 10% of student enrolments; and
- implementation at a time when the higher education sector continues to be affected by the economic impacts of the COVID-19 pandemic.

Navitas aligns with IHEA in opposing the application of cost recovery to the regulation of higher education quality. This opposition is based on the following:

- That the principles set out in the cost recovery framework do not apply. The total Australian economy and society are beneficiaries of high-quality higher education, and all Australians are recipients of government activities that regulate higher education quality.
- Implementing TEQSA cost recovery risks negative impacts on the competition, innovation and financial viability of those who will pay the charges.
- Considering the $39bn contributed to the Australian economy by the international education sector, the $16m allocation by the Commonwealth to TEQSA is a small amount and accords with public interest.
- The relatively small number of regulated entities results in high costs to individual businesses.
- The extreme range of institution sizes (i.e. 33 EFTSL to 70,000 EFTSL) makes equitable distribution of costs virtually impossible.
- Domination of the total sector by large public institutions largely funded by the Commonwealth creates an incentive to recover the largest possible amount of costs from the independent sector which comprises mainly small and medium businesses and not-for-profit providers.
- Cost recovery will be passed on to students, adding millions of dollars to student HELP debt.

Further, Navitas fully endorses IHEA's key recommendations:

1. **That the federal government should reconsider applying full cost recovery to higher education quality regulation**

   Cost recovery in higher education fails to meet intent of the Australian Government Charging Framework and will seriously impact the competition, innovation and / or financial viability of providers subjected to the charges.

If the federal government will not reconsider full cost recovery, Navitas supports the following IHEA recommendations, noting a slight change of emphasis on points two and four:

2. **That the implementation of higher education quality cost recovery be further deferred, and providers who took up the option to defer regulatory activities during the pandemic should be exempt from incurring the full cost recovery burden of those items as an equity measure**

   The implementation of cost recovery on 1 January 2022 is too early for a sector still facing the impacts of the COVID-19 pandemic with borders closed, ongoing uncertainty of domestic viral outbreaks and slow economic recovery in critical industries. The sustainability of many providers continues to be supported by regulatory fee waivers. Further, providers who took up the option to defer regulatory activities during the pandemic should be exempt from full cost recovery fees and should instead have the current regulatory fees for those activities applied. Finally, it is incongruous to have the independent higher education sector supported by Government sustainability measures on the one hand, while on the other imposing a massive financial burden.

3. **That the approach to cost recovery be redesigned**

   The current cost recovery approach inequitably impacts the independent sector; is unnecessarily complex; is disproportionately applied to smaller providers; and is inadequately supported by service obligations and so needs to be redesigned.

4. **That the federal government's recovery of the costs of quality regulation be apportioned simply and fairly based on institution's EFTSL load in the case of the annual levy, but not in the case of course accreditation**

   While the total economy and society benefit from quality education, the main beneficiaries of quality regulation are enrolled students. Therefore, the fairest means to recover the cost of regulation is via a broad-based annual levy, calculated according to student numbers. Cost recovery could be achieved through the introduction of a Higher Education Student Administration fee levied on providers. Course accreditation cost recovery should be reflective of the regulatory effort and workload, not on the relative size of a provider.

5. **That a service charter of TEQSA performance obligations underpin the application of cost recovery**

   It is proposed that the Charter be negotiated with the total sector through the range of peak bodies representing TEQSA regulated entities prior to implementation of cost recovery.

Q1: What are your views on TEQSA's proposed approach to implementing increased cost recovery in line with the Government's policy?
Response Navitas does not support full cost recovery given the large financial burden it will place on both providers and students, particularly at this challenging time for the higher education sector. We believe full cost recovery is likely to stifle innovation and make it more difficult for providers to respond in a timely and effective way to the ever-changing demands of industry and students. Navitas, like most independent providers, does not receive tax-payer funds (beyond small numbers of Commonwealth Supported Places for Higher Education Certificates) and therefore the regulatory burden of full cost recovery will be borne by our students through higher course fees. This comes at a time when we need to encourage, not discourage, more Australians to undertake higher education studies to meet critical skill shortages and drive long-term economic recovery. Beyond our concerns with the principle of full cost recovery, Navitas is deeply concerned by the lack of detail, tailored financial modelling and transparency in the proposed approached outlined by the Tertiary Education Quality and Standards Agency (TEQSA). These concerns are detailed in our responses below. In summary, Navitas believes there needs to be greater clarity and communication around several key areas, including: • how TEQSA will determine the regulatory effort required to assess and charge a provider for applications; • how compliance and investigations will be conducted and charged; • how TEQSA will ensure a high standard of service delivery to providers, including on matters such as turnaround times for applications and response times to regulatory queries; and • what rights of appeal will be available to providers to challenge TEQSA decisions relating to regulatory effort, compliance and investigations.

Q2: Do you agree or disagree with TEQSA's proposed approach to attribute application-based costs according to relative regulatory effort?
Response Navitas does not agree with TEQSA's proposed approach to attribute application-based costs according to relative regulatory effort. We believe there are many issues to be addressed in this proposal. At a minimum, there is a need for greater clarity and transparency around how higher education providers (HEPs) will be classified into the three different levels of regulatory effort (including which key performance indicators will be applied to the assessment), what regulatory effort is applied to each of these tiers and how costs will be applied for each tier. There is no information about what benchmarks are being used to determine the different tiers of regulatory effort, nor is there any information as to how providers can move between the different tiers. For example, our key questions include: • what do providers need to demonstrate to move to a lower cost level that requires lower regulatory effort? • Can TEQSA move a provider into a level of higher regulatory effort and higher cost at any point in time? • And if so, what triggers such moves? TEQSA states that it will consult with the HEP and *"assess the level of regulatory effort required, which then directly influences the final cost and hence, the appropriate level of application fee."* We understand from a recent briefing with TEQSA that case managers will work with providers to determine which tier of regulatory effort applies, based on the existing risk assessment framework. We contend that this approach introduces high levels of uncertainty – particularly around financial impost and regulatory timelines – into the process and inequity for providers. Navitas advocates for an equitable model with clearly defined benchmarks that will allow providers to plan and budget for course and registration applications. While TEQSA states the components of regulatory effort, little is said about how the differences in regulatory effort are applied by TEQSA for each tier. For example, if a lower level of regulatory effort is required for an application, can a provider assume that there will be less onerous requirements on the provider or that a provider can expect an outcome in less time? Again, greater transparency is required to demonstrate what level of service is being provided by TEQSA for each tier of regulatory effort. In summary, when providers are being charged for regulatory activity, the provision of services by TEQSA should be governed by clear and agreed service delivery standards, particularly with respect to response and turnaround times. Navitas calls for a clearly defined, consistent approach to service delivery aligned to key performance indicators that are publicly available.

Impact on stand-alone ELICOS providers

Navitas notes that the consultation paper is focussed on HEPs. With some providers regulated by TEQSA being stand-alone ELICOS providers, it is unclear how these providers will be classified for cost recovery purposes given ELICOS providers report data based on student weeks studied rather than number of students or EFTSL.

The estimated total fees and charges provided in the consultation paper are considered especially onerous for stand-alone ELICOS providers, particularly given the impact of the COVID pandemic on the sector with its 100% reliance on international students. The sector is unlikely to be able to sustain charges of such a quantum. Navitas seeks clarification from TEQSA on the estimated costs for stand-alone ELICOS providers.

Q3: Do you have any comments on the proposed method of adjusting course accreditation fees based on a provider's student numbers?
Response The proposal to adjust course accreditation fees based on student numbers is not supported by Navitas. This is because the workload and effort required by the regulator to accredit a course is the same whether it comes from a large or small provider. The rationale of cost recovery is to recoup the cost of undertaking a particular activity. By applying a sliding scale to fees based on relative size of a provider instead of an assessment of the costs associated with the accreditation of courses defies the logic of cost recovery. The ability for providers to launch new courses to market in a timely way is critical to meeting the education needs of students and the employment needs of the workforce. It is also critical for provider sustainability. Higher education providers who do not have self-accrediting authority may be discouraged from extending their course portfolios if they will incur high course accreditation fees. Higher education providers with self-accrediting authority status that are seeking to accredit new courses and re-accredit courses outside the scope of that authority will also incur increased costs. The potential impact of onerous cost recovery is likely to stymy innovation and diversification in the sector.

Q4: Do you agree or disagree that the cost of compliance and investigatory activities should be borne by those providers being investigated?
Response Navitas does not agree that the cost of compliance and investigatory activities should be borne by those providers being investigated. This cost recovery measure gives rise to the potential for providers to be charged an hourly rate for open-ended and drawn-out processes that we have no control over. Should this measure be implemented, and Navitas strongly argues it should not, there needs to be far greater clarity around the process and natural justice afforded to providers in such circumstances. For example, TEQSA must ensure that: • a provider has had the opportunity to exhaust its own internal complaints and appeals procedure before any investigation is launched by TEQSA; and • a provider is made aware of TEQSA's intention to undertake an investigation – and given the first right of reply – before any investigation proceeds. In relation to the first point above, if a student has not exhausted the provider's complaints and appeals procedure, we argue that TEQSA should redirect the student to the provider, with no cost charged to the provider unless and until the matter escalates beyond that internal process. Navitas believes there also needs to be greater clarity regarding the role of the Ombudsman in such investigative processes. Finally, in regarding the hourly rate for investigations, Navitas believes there needs to be greater transparency around how the time taken to undertake an investigation is calculated, what activities will be charged and how this will be documented. Further, we argue that there should be a cap on fees charged to investigate a matter, and that this fee should be disclosed.

Q5: Do you have any comments on the structure of the proposed new annual levy?
Response There are three key points that Navitas makes in regard to the proposed new annual levy, noting our opposition to full cost recovery outlined above. First, in a full cost recovery environment there is an expectation that the agency providing a service to an industry is run efficiently and effectively so as not to place undue financial burden on that sector. This goes beyond service level standards – although these are important – to elements such as ensuring that internal resources are allocated appropriately, that there is no unnecessary waste and that operating costs are kept to the absolute minimum. Second, in applying this broad-based levy it is most appropriate to apply a per student fee. As noted above in our recommendations, this could be achieved via a Higher Education Student Administration fee. Finally, consideration must be given to which activities undertaken by the regulator truly deliver benefits to the sector in its non-application-based activities. Close consultation with the sector on which activities support quality outcomes should be undertaken and those activities that do not deliver broad-based benefits should not be undertaken in a full cost recovery environment.

Are there any other comments you wish to make in relation to the fees and charges proposal for cost recovery consultation paper?
Response Navitas makes the following additional comments in response to the proposed full cost recovery approach outlined by TEQSA. • Providers that took up the option offered by TEQSA to push back re-registration and re-accreditation applications during the pandemic are at a distinct financial disadvantage as they will now be liable for the full cost recovery associated with each of those applications. Navitas strongly advocates that full cost recovery not be applied to regulatory activities that were delayed due to the COVID pandemic. A grandfathered approach which would see current fee structures applied to those delayed activities would be equitable. • Navitas is concerned that the proposed cost recovery model will discourage providers from engaging with TEQSA on important regulatory issues for fear of being charged for that service, particularly given the lack of distinction between 'normal business' case management and 'investigation'. 'Business as usual' case management – that does not incur a fee – should be clearly articulated in the service level agreements with providers. • Navitas seeks to clarify whether fees charged to providers for compliance, investigation and other 'regulatory effort' will be made publicly available. While this would ensure transparency and accountability in service delivery, it would also have potential to negatively and unfairly impact a provider's reputation. Navitas contends that any publication of such financial information should be de-identified. • Given that providers' budget cycles are aligned to the Australian Tax Office financial year, Navitas argues that the cost recovery model also be aligned to the financial year rather than commencing at the start of the calendar year, as currently proposed. An implementation date of 01 January 2022 will not only impose financial burdens on providers who are already half-way through a budget cycle but impose additional financial burdens at a time when the sector is still managing the impact of COVID-19 on student enrolments, financial performance and sustainability. • Finally, Navitas does not support charging providers to undertake reviews that are initiated by Government above and beyond normal regulation and compliance.