

Review of the impact of the Tertiary Education Quality and Standards Agency Act 2011 (Cth) on the Higher Education Sector

November 2016

TOR 1: What has changed for the sector in moving to a single national regulatory framework from multiple state- and territory-specific arrangements?

Prior to the introduction of the TEQSA Act, each Australian state and territory had its own legislation setting out the requirements to operate as a higher education provider. The introduction of the TEQSA Act resulted in the creation of a single national regulatory framework.

The Review invites your observations on what has changed for the sector in moving to a single national regulatory framework.

Response

Navitas believes that the transition to a single national regulatory framework has been a wholly positive move. In our view state/territory based registration and accreditation was characterised by a variety of regulatory approaches and interpretations of regulations.

We believe the introduction of the TEQSA Act has led to:

- A relatively coherent and consistent approach to regulation and the interpretation of standards across Australia;
- A simpler, yet not simplistic, compliance regime;
- Timely and useful information on regulatory activities and outcomes. This is both in the case of systemic reforms and also in activities and actions at the individual provider level;
- The gathering and sharing of best practice through comprehensive Guidelines and regular updates;
- A wider cohort of industry experts accessed by the regulator;
- A more consistent application of the regulatory approach across provider groups and regulators (TEQSA officers) themselves;
- The sector being better informed of regulatory changes, both national and international, which supports both strategic and operational planning;
- A more holistic and inclusive view of the sector, a strong recognition of the diversity of the sector and therefore better engagement and consultation with all providers;
- A clearer understanding of regulatory expectations – supported by both the TEQSA Act and the Higher Education Standards Framework (HESF) – not only by providers but by the variety of other parties with who providers engage as part of their day to day operations;
- A streamlined regulatory approval process – which is underpinned by the principles of regulatory necessity, risk and proportionality – that has enabled a nationally consistent approach to safeguarding a quality Australian higher education sector; and
- The breaking down of professional accreditation barriers to entry for private providers, through its recognition of all providers as Higher Education Providers (HEPs), both university and non-university HEPs. Our institutions, like many other non-university HEPs, are now able to professionally accredit our courses with professional bodies, where relevant to do so, in order to ensure our courses meet the relevant educational and training standards that allow our graduates to seek recognition and practice as a professional.

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

The objects of the TEQSA Act are set out in Section 3 ([link](#)). These refer to protecting and enhancing Australia's reputation for *quality* higher education and training services and protecting students undertaking, or proposing to undertake, higher education in Australia by requiring the provision of *quality* higher education. The objects also embrace other characteristics associated with quality or that advance quality.

The Review invites your observations on the extent to which the TEQSA Act has contributed to improved quality (in all of its aspects) in the delivery of higher education. Your response may identify changes you have made, or changes you have observed being made more generally in the sector, in response to registration or course accreditation requirements. We would be interested in any examples you could provide regarding the relationship between the identified changes and quality outcomes. It would be valuable, wherever possible, if your response indicated how these observations differed from what was observed in the pre-TEQSA Act regulatory environment.

The review also invites you to respond to the following: should the TEQSA Act authorise the conducting of quality (thematic) assessments to assess the level of quality of higher education provided by particular providers and/or to identify systemic issues? If so, who should conduct these reviews – TEQSA, the Department, the HESF, or another organisation or body?

Response

Observations on the extent to which the TEQSA Act has contributed to improved quality (in all of its aspects) in the delivery of higher education

There are a number of points to be made in this regard.

Firstly, Navitas believes that the HESF, as the instrument through which TEQSA (and thereby the TEQSA Act) facilitates compliance and the maintenance of quality, is the key factor in issues of quality in Australian higher education. The latest version of the HESF is a more comprehensive and 'user friendly' version and will support the management of quality compliance across the sector as it has less room for 'interpretation' of the standards which can lead to adverse outcomes in such a diverse sector.

Secondly, Navitas believes that the TEQSA Act allows for the approval of new providers in a measured and sensible manner. The sector has not been overwhelmed with new providers but nor have genuine providers been prevented from entering the sector. So while it is difficult to quantify if the introduction of the TEQSA Act has enhanced the quality education delivery, it could be construed from the very small number of providers that have been removed from the National Register, that the Act has given TEQSA the requisite powers and authority to manage the quality of provision effectively.

Thirdly, the requirements for providers to ramp up their corporate governance, risk and compliance management (and mitigation) have been made explicit in the HESF (i.e. the Act in operation) and this is a positive reflection on the effectiveness of the Act. The differentiation between corporate governance and academic governance has been a very positive element of the revised HESF and the combination of robust corporate and academic governance requirements is a very positive initiative.

Fourthly, the Act's objective of focusing on quality of the learner experience as well as learning outcomes is also a positive as it re-enforces for all providers the need to deliver a degree of customisation to the learning experience for groups such as indigenous students, disabled students, and, socioeconomically disadvantaged students.

Fifthly, the Act through the HESF is also quite specific regarding the need for sharing of best practice and the ongoing process of benchmarking as a genuine endeavour. It is a requirement that will generate a greater sense of sharing and adoption of effective practice and reduce the silo

mentality that is sometimes present in the higher education sector, which is to the detriment of enhanced learning and teaching across the sector.

Finally, it is right that the TEQSA Act and the HESF focus on the learning experience for the students and it is appropriate that providers failing to adhere to the standards set out in the HESF should be held to account. However, it is important that the TEQSA Act and the HESF do not make value judgements regarding aspects such as the employment status of academic staff that in isolation are not a measure of quality learning outcomes and experience.

Should the TEQSA Act authorise the conducting of quality (thematic) assessments

The removal in 2014 of the provisions in the TEQSA Act, which essentially allowed TEQSA to conduct sector-wide thematic quality reviews of institutions or courses of studies, has left a sizable gap in Australia's continued enhancement of its understanding of best practices in Australian higher education and in its promotion of these best practices internationally.

Navitas would support the addition of provisions to the TEQSA Act that authorise the conduct of sector based quality (thematic) assessments for the purpose of assessing quality trends, identifying best practices and identifying systemic issues, provided these quality (thematic) assessments:

- encourage sector-wide competitiveness, autonomy and reduce (rather than increase) red tape for providers;
- are drawn from information already held by regulatory authorities and government agencies and do not require individual providers to supply additional information or create any other additional regulatory or reporting burdens on providers; and
- focus on assessment from a sector-wide vantage point, and make use of available information and data in an aggregated and de-identified form.

Given the above, and in the context of the objects of the TEQSA Act, it seems logical that TEQSA be appropriately resourced to be responsible for these sector quality (thematic) assessments in consultation with the HESF and collaboration with relevant government departments, including Department of Education and Training and Department of Immigration and Border Protection.

TOR 3: The extent to which the TEQSA Act has contributed to improved regulation

The Review invites your observations on the extent to which the TEQSA Act has contributed to improved regulation in the higher education sector. Your response might have regard to Part 2 of the TEQSA Act that sets out "basic principles for regulation" ([link](#)).

Again, it would be helpful if your response could demonstrate how your observations differ from experiences under the pre-TEQSA Act regulatory environment. Where possible, we would welcome estimates regarding the relative differences in the compliance costs (whether time or financial) between the current and past (pre-TEQSA Act) regulatory landscapes.

Response

Navitas believes that the transition to a regulatory framework that is underpinned by necessity, proportionality and risk based decision-making has resulted in a number of significant improvements. For example:

- As noted above, a consistency and coherence of regulation across jurisdictional boundaries;
- The 'needs' based consideration of minor and major course changes is an exemplar of the application of proportionality;
- Increasing the maximum periods for registration and accreditation to seven years, while still requiring the annual Provider Information Request (PIR), which is a key risk mitigation strategy for TEQSA in that it enables an annual monitoring process;

- The inclusion of Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) registration in the Higher Education Provider registration process. However, Navitas notes that as TEQSA is now an ESOS Agent under the Education Services for Overseas Students (ESOS) Act, the six monthly risk assessments being conducted by TEQSA, are a high regulatory burden on providers, and indeed a high administrative cost on TEQSA. Consideration should be given to streamlining this process;
- Cost reductions for multi-state providers in connection with provider (re)registration and course (re)accreditation application processes.

Navitas has several institutes that operate across a number of jurisdictions, observations relating to the changes to regulation under the TEQSA Act in this regard include:

- There has been a marked reduction in the regulatory burden and unnecessary red tape;
- The transition to a national regulatory approach has better enabled our institutions to:
 - align the delivery of our courses and services nationally, so that our learners' study experiences are the same irrespective of where or how they study
 - re-direct our resources (prior caught up in meeting onerous state based regulatory requirements) to continuous improvement actions aimed at raising our own bar in alignment with best practice higher education provision
 - sustainably grow our provision of quality higher education to meet the education and training needs of Australian learners, industry and the professions

Navitas would also however point to three key areas where the operation of regulation under the TEQSA Act could be improved.

Firstly, Navitas believes that in implementing the Act, TEQSA and its officers could be better informed of the diversity of operating models that exist in Australia's higher education sector. Related to this point is recognition that there are quality providers in all provider 'types' and that a more balanced and evidence-based approach to monitoring and management of all providers is required. The treatment of some non-university HEPs in the TEQSA risk rating exercise is an example of this in practice.

Secondly, in a few cases the proportionality of regulatory interventions could be interpreted as excessive imposition of one individual regulator/expert's preference over another expert's preference. But for the most part TEQSA has managed this tension well.

Finally, the TEQSA Act contains no provisions on course teach-out. As a result, non-self-accrediting providers must currently apply to TEQSA to re-accredit a course for teach-out (and be subject to associated application approval consideration periods and fees). While TEQSA has done well in minimising the regulatory burdens in connection with these course teach-out application processes, the need for a provider to lodge an application remains. This application process can create a period of significant uncertainty for learners enrolled in courses for which teach-out approval has been sought. Under the former state and territory based regulatory arrangements, course teach-out could be achieved at no cost to the provider simply through a notification process. The confirmation process was near immediate providing prompt clarity for the provider and learners. Navitas believes this approach is something that TEQSA could easily adopt, without any detrimental impact on quality.

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

The 2013 Lee Dow/Braithwaite Review of Higher Education Regulation observed that "[i]f there was any topic that garnered the most complaints, it was duplication of effort in meeting the requirements of various Acts" ([link](#)).

The Review invites your observations on any unnecessary overlap between the TEQSA Act and other legislation. It would be helpful if your response could identify, where possible, the extent to

which any overlap imposes additional regulatory burden or gives rise to uncertainty or unintended consequences.

Response

Navitas would agree with the Lee Dow / Braithwaite Review's observation on this matter. The regulatory burden on providers – particularly if they have obligations as a higher education provider, a Registered Training Organisation and as a CRICOS registered provider – is immense. The single biggest red tape reducing change the government could make is to standardise the:

- information and data required by all regulators and government agencies;
- format in which it is required; and
- timing of when it needs to be provided.

The simplest and easiest way to facilitate this is to re-develop an existing IT system or design and build a new system that is fit for this purpose. This is possible, as TEQSA's use earlier this year of HEIMS data demonstrates. The reduction in time, effort and costs that such a measure could bring for the sector as a whole is substantial and something that Navitas has long advocated for.

TOR 5: Whether there are amendments to the TEQSA Act or other changes that would enhance the Act's impact or its administration

The Review invites any suggestions you have for changes to the provisions of the TEQSA Act or other supporting legislation that would improve the effectiveness or efficiency of the legislation or its administration. Again, your response might have regard, among other things, to the objects of the TEQSA Act that are set out in Section 3 ([link](#)).

Your response might also have regard to the extent to which you view the TEQSA Act is capable of effectively adapting to future changes in the higher education sector, including changes brought about by matters such as advances in technology, increased global competition and higher education providers becoming more internationally focused in terms of research collaborations and sources of research funding.

Response

Navitas believes that the TEQSA Act is generally effective and efficient, noting the suggestions we have made in other sections to improve some aspects of the legislation. Beyond the recommendations highlighted in response to other Terms of Reference, Navitas raises the following points for consideration and potentially further consultation:

- Given the increasingly internationalised nature of higher education, the TEQSA Act needs to contextualise and benchmark our regulatory approaches – particularly in terms of necessity, proportionality and risk – to international standards and norms. We note however that TEQSA is pursuing a range of Memoranda of Understanding that will assist in this endeavour;
- Again, internationalisation of higher education may require a greater emphasis in the Act, and subsequently in the HESF, on transnational education. This would give Australian providers already active in this space or looking to operate internationally with a more solid quality and regulatory framework on which to build these opportunities and also to compete internationally with institutions from the UK for example.
- As we noted above professional accrediting bodies have aligned their requirements to take account of qualifications awarded by non-university higher education providers (NUHEP). However, there are still some universities that do not have admission or credit transfer policies to recognise qualifications or units of study undertaken at a NUHEP.
 - Navitas recommends the mutual recognition of all units / qualifications from all Australian HEPs be provided for via a similar mechanism than is present in ASQA's Standards for Registered Training Organisations.
 - A clause similar to Clause 3.5 that reads *'the RTO accepts and provides credit to learners for units of competency and/or modules (unless licensing or regulatory requirements prevent this) where these are evidenced by (a) AQF certification*

documentation issued by any other RTO or AQF authorised issuing organisation; or (b) authenticated VET transcripts issued by the Registrar could be inserted into the Act to facilitate the smooth, effective and efficient recognition of prior learning in higher education.

Finally, Navitas suggests that the Act and TEQSA as the regulator, in close consultation with the sector, need to consider the regulatory implications of the fundamental changes we are seeing and will see in higher education. There are numerous, well documented trends that are already discernible in higher education such as:

- Increasing disaggregation;
- 'non-accredited' credentials¹ delivered by institutions or by industry;
- The use of artificial intelligence in classrooms;²
- Personal Knowledge Portfolios that incorporate content, courses and experience that are curated over time; and
- Disintermediation (for example learner-to-learner instruction and learning).

These changes are global in nature, learners here in Australia can access learning 24/7 from anywhere in the world and vice versa. This is 'borderless' education – beyond offshore campuses and partnerships and online delivery of Australian Qualifications Framework programs. The AIE2025 roadmap,³ the long term market development plan for Australian international education, points to 'borderless' education as a significant opportunity for Australia. Deloitte Access Economics and EduWorld looked to define and quantify this in research that supported the development of the roadmap.⁴

Navitas believes that the current emphasis on outcomes in the HESF, as well as the principles of necessity, proportionality and risk will serve the TEQSA Act well going forward. The high degree of uncertainty and change however also requires these principles be applied via light touch, consultative regulation. We urge consideration of a forum and ongoing conversations that support future-oriented thinking and which brings together policy makers, regulators, the education sector, and other players in this space, such as edutech enterprises and industry-based credentialing groups, to consider and map required action in this space.

TOR 6: Whether the required functions of the Higher Education Standards Panel are adequately reflected in the TEQSA Act

The HESP is established by Part 9 of TEQSA Act; its functions are set out in paragraphs 168(1) (a) and (b), both of which relate to the Higher Education Standards Framework ([link](#)).

The Review invites your views regarding the required functions of the HESP and how these should be specified in the Act; you might consider whether any amendment is needed to reflect its ongoing role.

Response

Navitas believes that the functions of the HESP are relatively well reflected in the TEQSA Act. However, we would make the following recommendations, that the:

¹ See this study by the University Professional and Continuing Education Association, Penn State and Pearson, showing that Millennials prefer badging and certificates to traditional degrees and that 90 per cent of colleges and universities embrace alternative credentials – available at <http://www.upcea.edu/content.asp?admin=Y&contentid=504>

² See this article on 'Jill Watson', AI as a teaching assistant at Georgia Tech's online masters in computer science <http://www.businessinsider.com.au/watson-ai-became-a-teaching-assistant-2016-5>

³ See <http://www.austrade.gov.au/Australian/Education/Services/australian-international-education-2025/AIE2025-roadmap>

⁴ See <http://www.austrade.gov.au/Australian/Education/Services/australian-international-education-2025/growth-and-opportunity>

- Role of the HESP in terms of consulting providers on changes to the HESF be made explicit;
- Actual purpose of the HESP be more clearly defined, particularly in regard to its responsibilities and relationship to providers;
- Number of members that the HESP has at any one time be more tightly defined; and
- Parameters for membership be more clearly defined, including a requirement that the panel have increased representation of appropriately qualified and skilled people with diverse experience and background in all provider types.

About Navitas

Navitas Ltd is an Australian global education leader providing pre-university and university programs, English language courses, migrant education and settlement services, creative media education, student recruitment, professional development and corporate training services to more than 80,000 learners across a network of over 120 colleges and campuses in 31 countries. Navitas listed on the Australian Securities Exchange (ASX) in 2004 and is now an S&P/ASX Top 100 Company, employing more than 5,800 staff globally.

Navitas believes an innovative, diverse, globally connected public and private tertiary education and training sector is critical to Australia's future prosperity, intellectual capital and social cohesion.

Background on Navitas Higher Education Providers

Navitas incorporates a number of higher education institutions that deliver programs across Australia. Following is a brief overview of our key institutes.

SAE Creative Media Institute

Founded in 1976, SAE Creative Media Institute is recognised as a global leader in creative media education delivering quality higher education and VET programs in audio, film, animation, design, games and web/mobile to more than 10,000 students. In Australia, we employ almost 400 staff to educate about 3,000 students at six campuses.

Navitas Professional Institute

NPI is a provider of niche, quality education programs across counselling, psychology, social work, criminology, nursing and associated areas. NPI's programs cover various education levels from Certificate III, Diploma, Bachelor, and Honours through to Masters. With over 30 years' experience NPI currently delivers programs to approximately 6,000 students at six campuses in Australia and employs more than 300 staff.

University Partnership Australasia

In Australia Navitas operates nine TEQSA registered Higher Education Providers, two managed campuses and two joint venture university partnerships. Across these institutions Navitas delivers foundation level awards as well as AQF awards at the Diploma, Associate Degree, Bachelor and Masters level. Disciplines taught include Commerce, Engineering, IT, Nursing, Physiotherapy and other Health Sciences, Tourism and Hospitality, Communications, Built Environment, Psychology, Social Sciences and Humanities.

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14 November 2016