20 June 2021

Mr Alistair Maclean
Chief Executive Officer
Tertiary Education Quality and Standards Agency
GPO Box 1672
MELBOURNE VIC 3001

Via email only: consultation@teqsa.gov.au

Dear Mr Maclean

Submission: Fees and charges proposal for cost recovery

Thank you for the opportunity to respond to the proposed fees and charges for the Tertiary Education Quality and Standards Agency's (TEQSA) cost recovery for quality assurance and regulation of higher education. Thank you for the forbearance in accepting this late submission.

We welcome this opportunity to provide feedback, as have those TAFE Directors Australia's (TDA) TAFE members that offer higher education as part of their comprehensive offering of tertiary education and skills training.

TDA acknowledges the fees and charges are a result of a whole-of-government directive. Nevertheless, the additional costs to higher education providers compounds current distortions in access to higher education and runs counter to the often cited objective of diversity in the sector and what should be a level playing field for all higher education students irrespective of background. The further message to government in this submission is that fees and charges should be considered as part of all costs it puts on providers due to other regulation and policies for what is essentially a public good endeavour.

The submission also asks some specific questions relating to charging of TAFEs as Government entities.

I may be contacted on 0412 299 028 or at crobertson@tda.edu.au as needed. I hope TEQSA finds the attached of value in its considerations.

Yours sincerely

CRAIG ROBERTSON

Chief Executive Officer

TAFE Directors Australia

TAFE DIRECTORS AUSTRALIA

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

Introduction

TAFE Directors Australia (TDA) is the national peak body incorporated to represent Australia's state government owned Technical and Further Education (TAFE) institutes, and university TAFE divisions.

Many TDA TAFE members offer education across senior secondary schooling, Vocational Education and Training (VET) in secondary schools, post-school VET including apprenticeships and traineeships and higher education graduate and post-graduate programs. Of the 27 TDA TAFE members, nine TAFEs are higher education providers and a further six are TAFE divisions of dual sector universities. Importantly, TAFEs have coverage across Australia including offering higher education to regional and rural Australia[1].

TDA acknowledges the Tertiary Education Quality and Standards Agency (TEQSA) falls within the Commonwealth's requirement for its statutory authorities to charge cost recovery fees that reflect efficient unit costs of a <u>specific</u> good or service provided. The significant period of grace in full-cost recovery since TEQSA was established under an Act of the Commonwealth Parliament in 2011 and the responsiveness and flexibility by the Australian Government and TEQSA during the COVID period, including instances of fee waivers, is appreciated.

As noted in the consultation paper, commencing 1 January 2022, the intent is for TEQSA to move from the current partial cost recovery to 90 per cent full cost recovery and, in terms of the proposed annual levy, to transition fully by 1 January 2024.

1. Application of Charges to TAFEs as Government Entities

The *Australian Government Cost Recovery Guidelines* recognise that successive Australian Governments have followed the principle that non-government recipients of specific government activities should be charged some or all the efficient costs of a specific government activity.

TAFEs are (state) government, rather than non-government, entities in receipt of specific Australian Government activities; in this case the regulatory services provided by TEQSA. TDA requests that TEQSA validates whether the recovery of costs of its regulatory services to TAFEs is appropriate in view of Section 114 of the Australian Constitution which states '…nor

[1] https://tda.edu.au/highered-and-tafe/

shall the Commonwealth impose any tax on property of any kind belonging to a State'[2]. At present it is assumed TAFEs, as fully state government owned, operate as non-government entities in higher education by virtue of covering Commonwealth legislation.[3]

This point is raised in particular because of TEQSA's intent to charge TAFEs an annual levy, rather than just recover costs associated with a specific service to TAFEs operating as non-government entities. The Australian Parliament in the last decade has engaged in robust debate about when a levy is a tax, and this may set a precedent for the cost recovery schema proposed by TEQSA.

2. Principles to Guide Cost Recovery Design

In a pro-business environment, the imposition by Government of full-cost recovery of regulatory activity makes sense if it applies where the level of regulation is appropriate and the regulation activity is efficient. TDA contends the imposition of full-cost recovery conditions on TEQSA is preceding these conditions.

The proposed fees and charges add to a range of distortionary costs TAFEs carry and further compromise competitive neutrality principles:

- Direct costs include these proposed fees and charges plus transaction costs in engaging with TEQSA on regulatory matters and direct costs from responding on non-regulatory matters, such as the Government seeking assurances on student safety and freedom-of-speech.

- Indirect costs are the extra effort required of TAFEs in attracting students given student fees are not able to be subsidised with Commonwealth Supported Places (CSP) funding, despite delivering the same product as universities to at least the same standard. A further indirect cost is the deterrent of Commonwealth Government student loan fees in attracting students.

TDA contends the agenda for minimised regulation is not complete. An example is barriers to self-accreditation. It appears discriminatory that consideration of self-accreditation needs a provider to have a clean track record of five years at the discretion of TEQSA (and without review) and matters unrelated to the attributes of accreditation are counted. Noting the fees and charges will commence before regulation reform can be put in place, TDA recommends a strategic approach be adopted as soon as possible to examine de-regulation options that provides a stronger incentive for providers to self-accreditation and minimise TEQSA activity.

It is difficult to justify these costs (direct and indirect) on the grounds students at non-university providers achieve higher private returns than those at university. Private returns would be expected to be equivalent across the sector, particularly as accreditation policy harmonises the product. The centrality of scholarship in all accredited learning and the pursuit of knowledge, expects the same learning outcome. By its very nature, all higher education is about exploring and promulgating valid knowledge so it would be expected to

[2] https://www.legislation.gov.au/Details/C2013Q00005

[3] https://www.finance.gov.au/sites/default/files/2020-02/RMG-304%20Australian%20Government%20Cost%20Recovery%20Guidelines.pdf p.3

be the same regardless of provider if regulation works as intended. Effectiveness of knowledge transfer may generate differences in private returns, but that is not a feature of the accreditation apart from assessment of governance and review processes within a provider.

Of more consequence, a university can readily set up a competing course with access to CSP funding and without the deterrence of government loan fees on students. Competitive advantage - that may warrant discretionary fees across all higher education providers (as a form of government validation of course and provider integrity) – quickly dissipates.

Recommendation

That feedback is provided to Government that it:

- considers the concomitant aspects that should accompany full cost recovery of fees and charges, such as removing the tax on students in non-universities who access student loans and opening up CSP funding options for all higher education providers that seek access to such funding for their students; and
- examines de-regulation options, that provides a stronger incentive for providers for self-accreditation, to minimise TEQSA activity, to justify the imposition of full-cost recovery fees and charges.

3. Fees and charges impact access and affordability

The *Tertiary Education Quality and Standards Agency Act 2011*[4] (the Act), specifies three principles for TEQSA: regulatory necessity; reflecting risk; and proportionate regulation.

As a result, the government should be aware of the broader implications on access to post-secondary education, particularly for citizens who might not typically access higher education. Analysis by the Productivity Commission (PC) in 2019 in respect of the implementation of the outcomes of the 2008 Bradley *Review of Australian Higher Education*[5] presents some relevant evidence.

The PC asked two questions in respect of the outcomes:

- Who are the 'additional students' who enrolled in university under the demand driven system who would not have had the opportunity in earlier periods, and what are the academic and labour market outcomes they achieved?
- To what extent was the demand driven system more accessible to people from under-represented 'equity groups' and what factors predict the under-representation of these groups?

The resulting PC report was aptly named, *The Demand Driven University System: A mixed report card*[6]. At Attachment A are the key points from the report. The key points start with 'University education can be transformative.' and end with 'University will not be the best

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[4] https://www.legislation.gov.au/Details/C2021C00154/Download

[5] https://www.voced.edu.au/content/ngv%3A32134

[6] https://www.pc.gov.au/research/completed/university-report-card

option for many.' Yet, most settings of the Australian Government favour one segment of the sector, to the detriment of access, and this applies to fees and charges.

Higher education at TAFEs is the best option for many, however, they cannot access CSP funding like students at universities and they are charged a Commonwealth Government student loan fee, whereas university students are not. Many TAFE higher education students are mature-age, come from low SES-backgrounds, are non-urban, and seek pathways out of VET into higher education. Students are also attracted to TAFEs because of their reputation for wrap-around academic support for students irrespective of the student's background.

The PC report found both low socioeconomic background and 'first in family' students were more likely to participate in higher education through the expansion of university places. However, the participation 'gaps' (compared to those not in an equity group) remain for Indigenous people and for people from regional or remote areas and may have widened. An equity group student with a given level of academic ability is still significantly less likely to attend university than their non-equity equivalents.

The PC also noted the 'additional students' needed greater academic support to succeed and while universities had strong incentives to expand student numbers, the incentives for this support are weak.

Australia's national interest, and the interest of disadvantaged students, including non-urban students is best met through a vibrant and diverse range of providers to maximise access. If TAFEs, and all NUHEPs, under the proposed cost recovery architecture are to shoulder more than their share of the cost recovery burden, any implementation along such lines should at least be accompanied, if not preceded, by reforms that balance the ledger across the sector in positive manner, for example equitably access to CSPs for their students and a level playing field in terms of Commonwealth student loan arrangements.

Recommendation

TDA encourages TEQSA to:

- model, or at least gain an understanding, of the likely landscape of higher education providers and their offerings post the full implementation of cost recovery as it is in Australia's economic interest to have a diverse range of non-university higher education providers (NUHEPS) servicing those least likely to enrol at, or least likely to succeed in, a traditional university setting; and
- these findings are factored into the architecture for TEQSA's cost recovery model.

4. Moving to an integrated post-secondary education sector approach

Policy is moving to a more integrated post-secondary education sector approach. A recent example is the joint announcement by Federal Ministers Tudge and Robert of 3 June 2021 for '…options to allow people to combine VET and university study to get a qualification…'[7]. Ministers have now asked Professors Bean and Dawkins AO to undertake a review for options. This is not unique, as Ministers Cash and Tehan made similar policy announcements,

[7] https://ministers.dese.gov.au/tudge/university-leaders-help-drive-collaboration-industry

in their former roles of responsibility for the education and skills sector, '…to deliver reforms that will give Australians the power to mix and match their qualifications across VET and higher education to suit their needs.'[8]

Further, the Commonwealth Department of Education, Skills and Employment has recently announced Digital Skills Cadetships that will include '…VET and higher education units packaged into new forms of micro-credentials…'[9]

As public policy moves towards a more integrated post-secondary education sector, the close linking of the VET education regulator and the higher education regulator should follow.

As noted, all TAFE NUHEPs are also regulated by ASQA. TAFEs, particularly, would welcome reform in the shared regulatory space, and that this reform does not lag implementation of reforms on cost recovery.

Recommendation

That in view of Government announcements of integration between higher education and vocational education and training sectors that a single regulatory service model be established for providers that deliver education services in both sectors, with flow-on reduction in fees and charges.

5. Annual levy

Setting aside the question whether a levy would be regarded as a taxation and therefore not chargeable to state government owned TAFEs, the shares of contribution to the levy is questioned.

As the consultation paper states, the proposed annual levy is a systemic levy '…for the protection and enhancement of the quality and reputation of the Australian higher education sector.'[10] TDA notes there are public expectations on TEQSA, such as upholding the reputation of higher education and protecting the interests of students – a regulatory objective often stated by TEQSA in dialogue with the sector.

Of the six regulatory outputs constituting the proposed levy it is noted only one will be apportioned based on equivalent full-time student load (EFTSL), with the other five to be charged equally against each higher education provider regardless of size.

Based on the figures in the discussion paper, $5.396 million of the levy will be raised in equal sums from each higher education provider. As shown in the Table 1 below, by virtue of the numbers given, non-university providers will pay over $4m compared to $1.38 million for universities. Taking account of provider size based on EFTSL for 2019 figures, non-university

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[8] https://ministers.dese.gov.au/tehan/job-ready-graduates-power-economic-recovery

[9] https://www.dese.gov.au/digitalskillscadetshiptrial

[10] https://www.teqsa.gov.au/sites/default/files/fees-charges-proposal-consultation-paper.pdf?v=1619751622 p. 6

providers are paying $37.51 per student for every $1.37 per full-time student paid by a university.

Table 1: TEQSA Proposed Annual Per Sector Levy: EFTSL University/Non-University

Sector	Provider Count	Cost Per Institute	Cost Per Sector	EFTSL	Cost Per EFTSL
University	34	$40,571.43	$1,379,429	1,008,720	$1.37
Non-university	99	$40,571.43	$4,016,571	107,088	$37.51
	133		$5,396,000		

In the public's mind TEQSA is seen as the custodian of quality and that would be directed mainly to universities for the benefit of students, both domestic and international. It appears distortionary to assign levy costs, therefore, without regard to student count. It appears discriminatory in the face of increased Government oversight of universities that TEQSA is seeking to cover the vast majority of its levy from non-university providers.

As demonstrated in the simple table above, TEQSA may be able to attribute all the proposed annual levy on a EFTSL basis.

It is noted that the 'concern management and resolution' element is proposed not to be charged to a new provider that does not yet have full year enrolment data available, 'Due to the time lag in availability of full year enrolment data…'[11]. In the first year the EFTSL of new providers is likely to be low in any case, so such an exemption would have little impact if it also applied across the other five regulatory outputs associated with the proposed levy.

Recommendation

That all six regulatory outputs of the proposed annual levy be based on EFTSL, consistent with the methodology for the 'concern management and resolution' output of the levy.

6. TAFEs are public institutes backed by their state government

TAFEs are 100 per cent owned and guaranteed by their state government. TAFEs take on a range of community obligations at a cost not imposed on non-TAFEs, such as meeting the educational needs of disadvantaged learners, including regional and remote students seeking higher education pathways.

TAFE Boards are accountable to their State Ministers for organisational performance, compliance, and risk. TAFEs are also accountable to their State Parliament through their Minister. Each year, TAFE Boards are legislatively required, through their Minister, to table in their state parliament an annual report addressing both the performance of the TAFE, in all

[11] Ibid. p.25

aspects, and a set of financial statements that transparently set out the TAFE's financial health. Tabling of these annual reports is covered by mainstream media.

All TAFE NUHEPs are also fully regulated by the Australian Skills Quality Authority (ASQA), yet both the VET and the Higher Education aspects of TAFEs are governed by the one board for that TAFE.

These factors significantly reduce TAFEs' liabilities for items under the proposed application-based charges. For example, given TAFEs are State Government backed, any further financial assessment by TEQSA would not reveal anything that is not already subject to government and public scrutiny.

Yet taking account of these factors will not risk creating an unlevel playing field for the sector. As noted above, the additional obligations on TAFEs as state owned public institutes and in meeting community need comes at a significant cost to TAFEs.

Noting the commitment to a sliding scale of fees for course accreditation and re-accreditation and that TEQSA is at an early stage of understanding its cost structures, reasonable adjustments can be made over time.

Recommendation

As TEQSA refines its cost structures, greater transparency is given to TAFEs of the actual costs of application-based activities and areas of duplication with either ASQA or State and Territory functions are considered with regulatory costs reduced accordingly.

7. Public Performance reporting

Near full cost recovery means the higher education sector, more than ever, has a strong interest in the effectiveness and efficiency of TEQSA, and its non-budget funded cost structures.

The greater risk to ongoing support for near-full cost recovery and ongoing trust of TEQSA will be asymmetrical information between the regulator and those being regulated. This will go to matters such as:

- whether oversight of the higher education sector is appropriate and efficient;
- whether providers are sufficiently informed so they can adjust their operating model to minimise their fees and charges; and
- calls for information to assure Government on aspects of regulation of higher education are well targeted and not frivolous.

Near full-cost recovery needs more detailed and public performance reporting. The general private sector benchmark is half-yearly public reporting and TDA supports this as a starting standard for TEQSA. In addition, if not already, an annual statement should be made available for each regulated higher education provider detailing the cost recovery undertaken from that provider for that year, in sufficient detail for that provider to be fully informed on the rationale for each of the charges incurred.

Recommendation

TDA recommends TEQSA consider:

- More detailed and public performance reporting, especially through half-yearly public reporting.
- An annual statement made available for each regulated higher education provider detailing their cost recovery payments.

8. Public Policy should be Budget-funded

TDA is cautious about the risk of cost creep by TEQSA, that providers will fund under the proposed annual levy. As TEQSA states in its consultation paper[12] one of its powers and functions under the Act is to '…provide advice and make recommendations to the Commonwealth Minister responsible for Education on matters relating to the quality and regulation of higher education providers.'

TEQSA activities currently excluded from cost recovery are listed on page 25 of the consultation paper. It is TDA's view that if government is seeking advice from TEQSA that goes to public policy not related to the administration of regulation of the sector, then this advice be budget funded. This is supported by the Government's cost recovery guidelines which state it 'is usually inappropriate to cost recover some government activities, such as general policy development…'[13].

As a peak organisation in the post-secondary education sector, TDA observes policy advice is being sought by government from a wider range of its agencies, including regulators where once it was developed, designed, and advised by the portfolio department. While broader feedback to inform policy is welcome, higher education providers should not fund this function through fees and charges to TEQSA.

Portfolio departments, including in this sector, are well resourced through the Commonwealth budget to provide advice to government, and this resourcing has been increasing in recent budgets. If the Government is seeking broader advice from TEQSA an option open to Government is to direct budget funding from portfolio departments to the regulator for that advice.

Recommendation

To the extent there are any policy functions expected by Government of TEQSA, these be funded from Budget and not through fees and charges on higher education providers, as policy responsibility rests with portfolio departments.

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[12] Ibid. p.4

[13] https://www.finance.gov.au/sites/default/files/2020-02/RMG-304%20Australian%20Government%20Cost%20Recovery%20Guidelines.pdf p.6

Conclusion

Some TDA members have also made submissions to TEQSA for this consultation. This submission is intended to complement those submissions.

Cost recovery by regulatory arms of the Commonwealth Government is supported if levels of regulation activity are appropriate and the activity is efficient.

The fees and charges, while appearing to be based on reasonable costs attributions, serve to compound existing inequities in costs to TAFE providers of higher education. The new fees and charges should only be implemented in the context of opening access to CSPs for those providers that seek it and in removing the tax on students who take up Commonwealth Government loans to access education at a non-university provider.

The cost is borne by disadvantaged and remote students who carry a higher cost in accessing higher education available to them through a TAFE and other non-university providers. The ultimate cost is the failure to take the opportunity to establish more diversity in the sector which supports economic diversification and growth.

TAFEs are best positioned to assist those who can least be left behind in terms of their educational and skill training aspirations, their career ambitions, and their ability to access the rewards of Australia's economic prosperity through gaining higher education qualifications.

There are social and democratic risks for Australia if there is exclusion. There needs to be a level policy playing field, where cost recovery is equitable, and boarder public policies are also applied equitably for the benefit of all students, irrespective of their background.

THE DEMAND DRIVEN UNIVERSITY SYSTEM: A MIXED REPORT CARD

Key Points[14]

- University education can be transformative. It is also costly in terms of forgone earnings, student debt and Commonwealth outlays, so it is important that students, taxpayers and the broader community benefit from the investment.
- The ‘demand driven system’ in place between 2010 and 2017 was intended to increase domestic student numbers and give under-represented groups greater access. The results were mixed.
- It was certainly effective in increasing numbers: the share of young people that attended university by age 22 years increased from 53 per cent in 2010 to an estimated 60 per cent in 2016, based on data from the Longitudinal Surveys of Australian Youth.
- Multivariate regression analysis shows that the 'additional students' — those whose attendance can be ascribed to the expansion of the system — were drawn from many backgrounds. However, compared with other students, they typically had lower literacy and numeracy and a lower Australian Tertiary Admission Rank (most had an ATAR less than 70).
- Many of the additional students succeeded. About half of the additional students graduated by age 23 years (with many still studying). About half of those graduates entered managerial or professional occupations, outcomes that are similar to those of other graduates.
- However, people that enter university with lower literacy and numeracy and a lower ATAR drop out at higher rates. By age 23 years, 21 per cent of the additional students had left university without receiving a qualification compared with 12 per cent of other students.
- University participation increased within some under-represented 'equity groups', but not others.
    - School students from a low socioeconomic background and 'first in family' students were more likely to participate in higher education following the expansion in university places.
    - However, the participation 'gaps' (compared to those not in the equity group) remain for Indigenous people and for people from regional or remote areas, and may have widened.

- Despite the expansion, the level of participation among all these groups remains far lower than for people who do not come from disadvantaged backgrounds — a reflection of poorer *average* school performance and a range of cultural and environmental factors. In the latter respect, an equity group student with a given level of academic ability is still significantly less likely to attend university than their non-equity equivalents.

[14] https://www.pc.gov.au/research/completed/university-report-card/university-report-card.pdf p.2

- Overall, the demand driven system succeeded in increasing the number of students and made progress in improving equity of access. However, many are entering university ill-prepared and struggling academically. This study suggests some areas for further policy consideration:
  - The school system has arguably not adapted to the role needed of it to prepare more young people to succeed at university, or more broadly to meet the growing demand in the Australian economy for complex and adaptable skills. Average literacy and numeracy of school children needs to rise to fill this role, reversing the sharp falls since 2003.
  - Children growing up in regional or remote areas with the same academic ability as their metropolitan peers continue to be much less likely to attend university.
  - The growing risk of students dropping out of university requires attention. On average, the additional students need greater academic support to succeed. While universities had strong incentives to expand student numbers, the incentives for remedial support are weak.
  - University will not be the best option for many. Viable alternatives in employment and vocational education and training will ensure more young people succeed.