

SUBMISSION TO TEQSA COST RECOVERY CONSULTATION

3 June 2021

Universities Australia welcomes the opportunity to make a submission to TEQSA's consultation on its cost recovery implementation statement. Universities Australia is the peak body representing Australia's 39 comprehensive universities that educate more than 1.4 million students and undertake research and community service activities for the benefit of all Australians. Universities Australia is concerned about the imposition of cost recovery measures when universities are facing extraordinary financial challenges, while supporting Australia's recovery from the COVID-19 pandemic and associated economic disruption at the same time. However, in the event that cost recovery proceeds, Universities Australia believes improvements could be made to TEQSA's proposed charging model to better reflect the *TEQSA Act's* principles of regulatory proportionality, necessity and risk.

1. POLICY CONTEXT

Universities Australia understands that TEQSA's cost recovery implementation statement is giving effect to Cabinet's decision to fully recover the costs of TEQSA from the higher education sector, excepting government initiatives on academic integrity and admissions transparency. However, Universities Australia continues to request reconsideration of this decision.

Universities are autonomous, self-accrediting institutions that have mature and responsible internal processes that effectively uphold and advance standards and quality in higher education and are consistently considered to be of low regulatory risk. TEQSA's regulatory and quality improvement activities are most frequently directed towards smaller, higher-risk non-university higher education providers (NUHEPs). This presents a challenge to ensure that costs are recovered equitably and in proportion to risk.

Universities are not-for-profit institutions that work to advance the interests of the Australian community. Every dollar that Universities Australia members receive in funding or other revenue is used to support teaching, learning, research and community engagement. While universities support a regulatory regime that ensures all higher education providers meet minimum quality standards, Universities Australia believes that imposing further charges on universities for the operations of the regulatory system is not appropriate.

It is important to note that Universities Australia members are already subject to a large regulation and compliance burden. Almost all Universities Australia members have several independent layers of oversight at both federal and state/territory level. Many of TEQSA's core and non-core functions overlap with responsibilities of state and territory regulators and have contributed to a substantial increase in red tape across the higher education sector over the past decade. Growth in regulatory activity across the sector has led to increasing compliance costs.

Universities Australia continues to urge the Government to reconsider its policy decision and to treat regulation of university as an activity with significant public benefits that is most appropriately funded from the Budget.

2. COST RECOVERY AND THE TEQSA ACT

Part 2 of the *Tertiary Education Quality and Standards Agency Act 2011* makes clear that TEQSA's actions must be based on principles of regulatory necessity, of reflecting risk and of proportionality. There is a fundamental challenge in the creation of any charging model – that it is very difficult to equitably apportion

charges across the higher education sector in a way that reflects risk, and has a commensurate relationship with necessity – that is, to not burden providers more than is reasonably necessary.

As TEQSA's *2020 Compliance Report* makes clear, universities are responsible for a low level of regulatory activity in the sector compared to their student load, leading to a relatively lower weighting of risk on universities. A commensurate application of risk-based cost-recovery would apportion the highest charges to NUHEPs – however such a course of action would unreasonably burden those providers, discourage innovation and diversity, and create extremely high barriers to entry and survival for these providers.

Noting these two concerns, it is more appropriate for the Government to recognise regulation of universities as a public good and fund the minimum necessary operations of TEQSA out of the Budget. This would be consistent with state and territory university regulators, and other regulators of charities and not-for-profits, such as the Australian Charities and Not-for-profits Commission.

3.0 SCOPE OF COST RECOVERY

The Cost Recovery Implementation Statement proposes that the full costs of TEQSA activities are recovered through significantly increased application charges to recover the costs of provider-initiated activity, imposition of hourly charges for compliance investigations, assessment and monitoring, and a regulatory levy. These charges are intended to recover the full cost of TEQSA's operation, except for three small areas of activity that Government will fund from the Budget. However, many of the activities to be funded through cost recovery go well beyond general regulatory activities.

As the Australian Government Cost Recovery Guidelines note, there are a number of activities that are inappropriate to cost-recover.¹ The Guidelines specifically cite activities such as policy development and Ministerial support as activities that are inappropriate to be included in cost-recovery – both of which are proposed to be funded through cost-recovery under the current proposal. Further, TEQSA undertakes a range of activities which are beyond its functions as a regulator, such as activities designed for the purposes of quality improvement; building communities of practice and providing advice on good practice to the higher education sector. While worthy, these activities are beyond the scope of functions and powers provided to TEQSA by the *Act* and should not be funded from the higher education sector on a compulsory basis.

In other sectors where quality improvement or other joint activity is managed by Government and through a sector-wide levy (such as the Rural Research and Development Corporations), the imposition of such a levy is done with the widespread consent of the sector and a mechanism for the affected sector to determine and direct the activity funded through levy. There is currently no mechanism for the sector to provide any oversight or direction for sectoral quality improvement activities that TEQSA undertakes.

Universities Australia therefore believes that careful consideration of the scope of activities proposed to be cost-recovered is necessary prior to the introduction of any further cost-recovery mechanism.

4.0 POTENTIAL IMPROVEMENTS TO THE PROPOSED CHARGING MODEL

Universities Australia remains of the view that recovering TEQSA's costs from universities should not take place. However, if the plan goes ahead, we recommend the following amendments.

1) ***Create distinct risk-based levy charging pools based on provider category.***

Australian universities are consistently rated as low regulatory risk by TEQSA – an assessment borne out by the relatively low levels of compliance activity against universities outlined in the TEQSA's *2020*

¹ Department of Finance (2014), *Australian Government cost recovery guidelines – resource management guide no. 304*, Australian Government, Canberra, p. 6,

Compliance Report. However, the proposed regulatory levy will be charged to all providers almost identically, regardless of the regulatory risk presented. A risk-based approach would be to create distinct risk-based pools for the purposes of charging the cost recovery levy.

2) *Include guidance notes in the application cost recovery pool.*

Guidance notes are primarily tools that support NUHEPs to interpret the standards in preparation for application-based actions, such as application for registration or renewal of provider status, course accreditation and other similar transactions. The cost of these documents should be recovered from the application-based charges pool, rather than the regulatory levy.

3) *Efficiency mechanisms.*

Implementation of full cost recovery should also be accompanied by the establishment of new mechanisms for the sector to have greater visibility of TEQSA's activities, and dedicated forums for the sector to provide advice and feedback on TEQSA's work programs. The establishment of a representative stakeholder reference group, as is common practice with other regulators, should precede the implementation of full cost recovery. Additionally, mechanisms to ensure and measure efficiency should be outlined as part of the cost recovery proposal.

4) *Provide for a transparent, independent evaluation of the cost-recovery regime.*

The cost recovery proposal has relatively limited oversight mechanisms and has the potential to change the dynamics of the higher education sector. Universities Australia suggests that it would be appropriate to ensure that mechanisms are established to counter any unintended consequences of the cost recovery regime. In particular, this should include the requirement for a periodic, independent, public review of cost recovery arrangements to be included in enabling legislation. The review should include international benchmarking of regulatory costs and regulator performance, to ensure the ongoing international competitiveness of Australia's higher education sector. It would also be appropriate for the TEQSA compliance report to become an annual reporting requirement, including information on TEQSA's annual regulatory activities and costs.

Recommendations:

1. Universities Australia recommends that the Government should not proceed with the full cost recovery of TEQSA activities from Australian universities.
2. In the event that cost recovery proceeds, a full review of TEQSA activities should be initiated and only those within the scope of TEQSA's functions and powers under the TEQSA Act should be cost-recovered.
3. In the event that cost recovery proceeds:
 - a. a regulatory levy should be apportioned equitably across distinct risk-based charging pools;
 - b. the cost of guidance notes should be recovered from application-based charges;
 - c. mechanisms to drive and report on regulator efficiency should be implemented;
 - d. an appropriate forum to provide sectoral input into TEQSA's work program should be established; and
 - e. a mechanism for periodic, independent review, including international benchmarking, should be provided in enabling legislation.