Risk and Legislation – How TEQSA’s Legislative and Regulatory Requirements Impact Providers

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1. Implications for providers in:
   • Governance and management frameworks
   • Managing change to the new regulatory framework
   • What might be expected from TEQSA in the future

2. Accountability frameworks at the University of Melbourne – a model for managing compliance and risk

3. Pre-TEQSA background

4. TEQSA regulatory model

5. University of Melbourne response to the new TEQSA framework

6. Examples of University of Melbourne verification processes from the Threshold Standards

7. Issues for the future
UoM Accountability Frameworks

- An integrated and unambiguous statement of accountabilities
- Annual cycles of planning, budgeting, reporting and quality assessment
- A single accountability structure through which the University
  - Achieves its strategic goals
  - Discharges its responsibilities to those to whom it is accountable.
Ensuring Accountability - Elements

- Risk framework
- Risk management & compliance reporting
- Quality assurance and standards
- Key measures

- University strategy
- Portfolio strategic planning

- Quality assurance and risk management

- Strategic planning

- Performance monitoring and reporting

- Business planning and budgeting

- External reporting
- Management reporting
- Student profile reporting

- Financial management
- Business planning
- Responsible division management
Unambiguous lines of governance and management

- Council
  - University Risk Committee
  - Finance Committee
- Vice-Chancellor
- Senior Vice-Principal
- Governance Group
  - University Secretary
  - Legal Services
  - Compliance and trusts
  - Internal Audit
UoM Accountability Frameworks

University Wide
(Top strategic risks)

Central plans & risk profiles
(Top strategic risks considered and responses developed.)

Faculty/school plans & risk profiles
(Top strategic risks pushed down to faculties to consider when drafting their plans and own risk profiles)

n.b. Compliant with international standard ISO/FDIS 31000:2009
Bradley Review

- clear standards to be applied across sector to establish objective and comparative benchmarks of quality and performance.

National Protocols

- not legally enforceable;
- principle based guidelines open to interpretation rather than clear standards;
- complex and difficult to understand;
- focus on inputs and processes;
- lack of knowledge in sector as to means of compliance;
- not suited to demand-driven system.
Model focuses on risk profile supported by Higher Education Standards Framework.

Framework more efficient as:

• more streamlined regulation and accreditation processes;
• providers deal only with one agency;
• more sector-wide consistency;
• initially more resource intensive to become familiar with Threshold Standards.

Focus on higher risk providers as part of risk proportionality approach in Act.

Should have positive impact on most universities.
Analysis of Threshold Standards

Provider Standards comprising:

• Provider Registration Standards;
• Provider Category Standards;
• Provider Course Accreditation Standards;
• Qualifications Standards.

Legislative instruments and legally enforceable;

Not TEQSA’s Standards, but used to administer TEQSA’s regulatory framework.

Query level of precision and amount of evidence required for compliance certification purposes;

Comparison/analysis with former National Protocols;

Role of Higher Education Standards Panel to review Standards.
A compliance verification matrix containing:

- each standard UoM is required to meet;
- detailed statement explaining process followed by UoM to address compliance with Standard;
- relevant laws, policies and procedures supporting performance;
- responsible officer for certification purposes;
- report on status of compliance and any outstanding issues;
- annual review as part of UoM accountability and compliance framework which complements divisional/departmental annual certification on external compliance obligations.
Provider Registration Standard (PRS)1.2 – Provider Standing –

Members of governing body and key personnel *demonstrate* they are ‘fit and proper’ persons

- University Secretary is responsible officer
- Is declaration attached to Material Change Template Guide suitable?
- No third party assessment as to fitness for office?
- Relevant criteria – to include, for example, expertise, residency, constituent representation or election for Council?
- UoM compliance framework directs responsible officer and users to various internal reference sources on governance responsibilities and conduct of staff policies/procedures
PRS1.3 – Provider Standing – Provider to take responsibility for the quality of every course of study leading to the higher education award it is accredited to award

- New requirement mandating an overall assessment on quality assurance
- President of Academic Board is responsible officer, as Board is responsible to Council for the quality of courses of study (Statute 4.1)
- President to certify
  - Framework reflects accountabilities
  - Systematic monitoring and review of courses/subjects
  - Processes to evaluate teaching and learning and graduate outcomes
  - Board kept advised on all QA matters
- President’s certification based on outcomes of surveys/reviews
PRS1.4 – Provider Standing – *Obligation to disclose all information, documents and assistance required by TEQSA*

- Issues arising from 2012 Provider Information Request
  - broad scope made it difficult to assess against principles of regulatory necessity or proportionality
- Scope of sections 27 to 29 *TEQSA Act*
- Meaning of ‘information’
- Any qualification to ‘financial information’ by reference to section 27
- Scope of other ‘information’ to be provided (section 28), but only if ‘TEQSA believes on reasonable grounds that the provider has information relevant to TEQSA’s functions’
- Obligation to notify TEQSA of ‘material changes’ being ‘an event that will significantly affect the provider’s ability to meet the Threshold Standards’ (section 29)
- Relevance of provider and its circumstances for material change notification (template guide)
PRS3.4 – Corporate and Academic Governance – *Regular monitoring of potential risks by governing body including risk mitigation strategies*

- University Risk Committee reporting to Council on status of strategic risk assessments and effectiveness of mitigation strategies
- Risk Management Committee reporting to Vice-Chancellor and URC on risk management framework and University administration of various risk management programs
- Senior Vice-Principal as senior non-academic professional staff member responsible for certification
PRS3.5 – Corporate and Academic Governance – *Governing body to ensure that all delegations are appropriate, documented observed and regularly reviewed*

- Coincides with University policy reform program, including transition from legislation to policy
- New delegations framework in a register of authorities and responsibilities sourced in relevant policies
- Policy framework also addresses distinction between delegation of powers/discretion (substantive function) and acting as agent for principal (ministerial power/function)
- Senior Vice-Principal as responsible officer for annual certification purposes
PRS4.1 – Primacy of Academic Quality and Integrity – Provider operations include the cultivation in students of critical and independent thought and the capacity for learning throughout life

- Provost is responsible for this standard, with various source materials being listed in support of University compliance
- cf PRS4.2 and commitment to ‘free intellectual enquiry and expression’ as example of possible duplication
PRS5.4 – Management and Human Resources – Provider administrative systems, policies to ensure effective management of its higher education operations

- Another new requirement which overlaps with some more specific requirements, but otherwise provides a more whole of University assessment
- Certification somewhat self-serving that policies ensure effective management of operations
- Predicated on adequate evidence of policy compliance and sector acceptance of external reviews
Examples of UoM responses on Threshold Standards

PRS6.1 – Responsibilities to Students – Provision of information to students before enrolment about their relationship with the provider

- Relationship embedded in contract and legislation
- Student enrolment declaration
- Role of ‘Student Charter’ reflecting expectations and responsibilities of students
- University compliance obligations in legislation addressing national security issues
PRS6.4 – Responsibilities to Students – Student grievance processes

- Process explains a robust student grievance framework
- Student Complaints and Grievances Policy sets out underlying principles, upholding natural justice and open communication
- Steps involved in the grievance processes and timelines
- Focus also on who is a ‘student’ given more restricted meaning in primary legislation, and also on concept of ‘enrolment’
Provider Category Standards (PCS)

- All registered higher education providers are within the ‘higher education provider’ category
- Other categories such as ‘Australian university’ require the provider to meet additional criteria
- Also duplication with provider registration standards, particularly in academic governance and responsibilities to students
  - for example, PCS1.2 (commitment to free intellectual enquiry) and PRS4.2 in promotion of free intellectual enquiry and expression
  - but can also be a different focus, for example, PRS6 (responsibilities to students) and reference to support services, compared with PCS2.7 on provision of student services
- Australian university category – PCS2.1 – means of certification of each course for compliance with qualification standards
Provider Course Accreditation Standards (PCAS)

- Maintenance of register addressing each section by reference to each offered course of study
- Office of Provost managing compliance framework in conjunction with faculties offering courses
- Some replication with earlier standards (for example, PCAS4 – teaching and learning of higher quality) but more specific by reference to each course
- Similar issues in PCAS2 (on adequacy of course resourcing and information) as compared to PRS7 (physical and electronic resources and infrastructure)
Examples of UoM responses on Threshold Standards

Qualification Standards

- Verification of processes followed for each course to meet relevant AQF standard
- Policies and processes dealing with qualifications for awards being reviewed for compliance with standards
- QS2.1.1 – query scope for mandating AQF reference on testamur (cf graduation statement) – being reviewed
- Review of graduation statement content and format by reference to revised guidelines issued in February 2012
- QS2.5 – enhancement of security mechanisms to prevent fraudulent use of statements – policy and procedure framework
- Requirements of Qualification Standards generally reflected in University policies and procedures
The Future – what might be expected from TEQSA going forward

• University developing rigorous compliance framework to address Threshold Standards

• More resource intensive in building framework at the outset, especially mapping processes and reference sources

• Less onerous going forward, subject to annual certification process

• TEQSA regulatory principles – query more broadly based approach to information gathering, but may be more in the establishment phase

• Universities should be net beneficiaries of proportionate risk-based regulatory framework
The Future – what might be expected from TEQSA going forward (cont)

• *Williams v The Commonwealth* – 2012 HCA
• Highlights lack of clarity as to legal basis for Commonwealth education program
• Does corporations power extend to all aspects of University operations?
• How far does ‘benefits to students’ power extend in supporting the TEQSA regulatory framework?
• Lack of clarity may promote more focus on a regulatory system supported by sector constituents
• Impact on other providers beyond universities and whether any constitutional challenge more likely from that sector as a consequence