



UNIVERSITIES
AUSTRALIA

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Submission to the ACNC consultation on
governance standards and reporting requirements

February 2013

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Executive summary

Universities Australia is pleased to make this submission on behalf of our 39 member universities to the consultation paper on governance standards and reporting requirements issued by the Australian Charities and Not-for-Profit Commission (ACNC). The submission makes the following points:

- Universities support the objective of the ACNC to reduce unnecessary regulatory obligations and minimise duplication of reporting requirements for the Australian not-for-profit sector.
- Obliging universities to comply with the ACNC's proposed governance standards and reporting requirements is inconsistent with this key objective.
- The governance standards of Australian universities are already thoroughly regulated by another government agency: the Tertiary Education Quality and Standards Agency (TEQSA) — which was specifically set up by government for this purpose. Hence there is no need or reason for additional governance standards proposed by the ACNC to apply to universities.
- On this basis, Universities Australia seeks an exemption from the ACNC for universities from compliance obligations with the ACNC's proposed governance standards. We request the ACNC amend its proposed governance standards to ensure they do not have application to the university sector currently regulated by TEQSA. Without an exemption, universities will be subject to an unnecessary, costly and inefficient duplication of regulatory obligations already applying to the university sector.
- Further, we request the ACNC exempt universities from providing financial reports to the ACNC on the grounds that Australian universities are required by law to provide detailed Annual Financial Reports to the Department of Innovation, Industry, Science, Research and Tertiary Education (DIISRTE).
- We note the ACNC Commissioner may allow reports given under law to another Australian government agency to be financial reports under the ACNC Act. We therefore request the ACNC Commissioner allow the annual financial reports provided by universities to DIISRTE to satisfy any financial reporting requirements under the ACNC Act.

Our proposals significantly enhance economic efficiency and community welfare by:

- supporting the objectives of the ACNC to reduce, rather than increase, unnecessary regulatory obligations on the not-for-profit sector;
- allowing the ACNC to focus its regulatory efforts to that part of the charity sector where further oversight and investigation may be required; and
- not imposing additional, costly, and inefficient regulatory and reporting burdens on the university sector, and instead allowing universities to invest productively in student education and research.

We will be in contact shortly to discuss our proposals. It would be of great help to the university sector, and prevent further unnecessary expenditures, if we could reach an in principle agreement with the ACNC on our exemption proposals by 15 March 2013.

Introduction

This submission is made in response to the ACNC consultation papers: “Development of governance standards” December 2012 and “Requirements for annual financial reports under the ACNC framework.”

In these consultation papers the ACNC seeks feedback on proposed new governance standards and financial reporting requirements applying to charities registered under the ACNC Act.¹ Given public universities are not-for-profit organisations they have been automatically registered under the ACNC Act, and therefore required to comply with the Act.

A key objective of the Australian Charities and not-for-profit Commission (ACNC) is:
*“to promote the reduction of unnecessary regulatory obligations on the Australian not-for-profit sector.”*²

The other major objective of the ACNC is to “maintain, protect and enhance public trust and confidence in the Australian not-for-profit sector” by developing governance standards for charities that promote the efficient and effective use of resources.³

This efficiency, accountability and transparency objective with universities is already regulated by another government agency: the Tertiary Education Quality Standards Agency (TEQSA). This new national regulator for the tertiary education sector began operations in January 2012 to streamline existing fragmented and inconsistent regulation of tertiary education providers. TEQSA was specifically set up to be the national regulator of the governance, quality and standards of universities.

Hence, any new governance standards proposed by the ACNC, if applied to universities, would cause an unnecessary, redundant and an inefficient duplication of regulatory obligations and standards already applying to the university sector. Therefore the ACNC should exempt universities from complying with any proposed governance standards.

We note basic religious charities are exempted from complying with any proposed ACNC governance standards. Universities seek a similar exemption.

TEQSA regulates the governance, quality and efficiency of universities

The Tertiary Education Quality and Standards Agency (TEQSA) regulates and assures the quality of Australia’s higher education sector, comprising both public and private universities.

TEQSA was established by the Tertiary Education Quality and Standards Agency Act 2011. The objects of the TEQSA Act are:

- to provide for national consistency in the regulation of higher education;
- to regulate higher education using a standards-based quality framework and principles relating to regulatory necessity, risk and proportionality;
- to protect and enhance Australia’s reputation for and international competitiveness in higher education, as well as excellence, diversity and innovation in higher education in Australia;
- to encourage and promote a higher education system that is appropriate to meet Australia’s social and economic needs for a highly educated and skilled population;
- to protect students undertaking, or proposing to undertake higher education by requiring the provision of quality higher education; and
- to ensure that students have access to information relating to higher education in Australia.

¹ The Australian Charities and Not-for-profits Commission Act 2012, hereafter (ACNC Act 2012).

² ACNC Act at 15-5 (c).

³ See Division 15 of the ACNC Act 2012 and Division 45-5.

TEQSA registers and assesses the performance of higher education providers against the Higher Education Standards Framework.

The Standards Framework comprises five domains: Provider Standards, Qualification Standards, Teaching and Learning Standards, Information Standards and Research Standards. The Provider Standards and Qualifications Standards are collectively the Threshold Standards, which all providers must meet in order to enter and remain within Australia's higher education system.

TEQSA undertakes both compliance assessments and quality assessments of the sector. Compliance assessments involve assessing a particular provider's compliance against the Threshold Standards for registration as a higher education provider. TEQSA then conducts quality assessments across the whole higher education sector.

To promote and enforce its legislated objectives, TEQSA draws upon the significant reporting obligations that the DIISRTE requires of universities — which includes providing over 50 data sets to DIISRTE annually, incorporating up to 200 reporting instances per year. DIISRTE's detailed Risk Framework also requires universities to report some additional material directly to TEQSA. During re-registration or any investigative action, TEQSA also has significant powers to collect additional information from universities.

The ACNC governance standards duplicate the role of TEQSA for universities

The ACNC Act requires the ACNC regulator to develop governance standards to give the public confidence that registered charities:

- manage their affairs openly, accountably and transparently;
- use their resources effectively and efficiently;
- minimise the risk of mismanagement and misappropriation; and
- pursue their purposes.⁴

These ACNC objectives with universities are already fully covered and regulated by the TEQSA Act, which requires TEQSA to:

- set and enforce threshold quality standards for the provision of university education services;
- promote a higher education system that meets Australia's social and economic needs;
- require provision of quality higher education that protect students studying or proposing to study;
- ensure students have access to information relating to higher education in Australia; and
- protect and enhance Australia's reputation for and international competitiveness in higher education.

The TEQSA process and regulation is comprehensive, with far greater scope and coverage for universities than the proposed ACNC governance standards. Therefore, there is no need or useful purpose served by having ACNC governance standards apply to universities. TEQSA assesses risk against a formal Risk Framework that covers seven key risk areas:

- Corporate and academic governance;
- Provider standing;
- Financial viability and safeguards;
- Primacy of academic quality and integrity;
- Management and human resources;
- Responsibilities to students; and
- Physical and electronic resources and infrastructure

⁴ See Division 45-5 of the ACNC Act 2012.

A key objective of the ACNC is to reduce unnecessary regulation

The ACNC Act 2012 requires the Commission to:

“(c) to promote the reduction of unnecessary regulatory obligations on the Australian not-for-profit sector.”⁵

The ACNC says it is:

“working hard to implement its object of promoting the reduction of unnecessary regulatory obligations for the sector.

To achieve this, the ACNC will work closely with other Commonwealth, state and territory government departments and agencies to identify opportunities to streamline and reduce reporting to government.

The ACNC Act also gives us the ability to accept information given by charities to another Commonwealth or state or territory government agency as meeting the ACNC's reporting obligations (subject to meeting some requirements).”⁶

The ACNC should exempt universities from its governance standards

TEQSA's role is to regulate the governance, quality, efficiency, and transparency of university services. It actively assesses risk for universities against 'corporate and academic governance' and 'financial viability and safeguards'. Therefore no public interest objective is advanced by imposing additional governance standards obligations on the university sector, administered by a different government agency (the ACNC).

Considerable economic inefficiency and waste would occur if universities were required to comply with new governance standards imposed by the ACNC:

- universities would have to put in place new systems, compliance procedures and behaviours to ensure they met the governance standards;
- universities would need employ new people and divert current staff resources away from productive activities to meet the new compliance burden; and
- universities would need change current record keeping, information retrieval and reporting systems to ensure compliance with proposed governance standards could be proven to the ACNC.

These outcomes would be inconsistent with the key objective of the ACNC to reduce unnecessary regulatory obligations, and therefore warrant the ACNC ensuring its proposed governance standards do not apply to the university sector currently regulated by TEQSA.

⁵ See Division 15-5 I C of the Act.

⁶ See “ACNC's ongoing role in the reform agenda” at: www.acnc.gov.au/ACNC/About_ACNC/NFP_reforms/Reform_agenda/ACNC/Edu/NFP_Agenda.aspx

We note basic religious charities are exempted from having to comply with any proposed ACNC governance standards.⁷ We would propose the ACNC in developing its final governance standards insert a similar exemption clause for universities registered under the TEQSA Act 2012.

For example, at Division 45 Governance Standards, the following text could be inserted at 45.3:

“These regulations must not require a registered entity to do, or not to do, a thing (including the things mentioned in 45-10 subsection (2) of the Act if the registered entity is a university registered under Section 198 of the Tertiary Education Quality and Standards Agency Act 2011.”

Universities Australia would be pleased to assist the ACNC on the appropriate wording for its redrafted governance standards to ensure such standards do not apply to the university sector currently regulated by TEQSA.

Granting the exemption is consistent with ACNC’s obligations to cooperate with other government agencies to streamline and simplify regulation

The ACNC is required to:

*“cooperate with other government agencies to oversee a simplified and streamlined regulatory framework for not-for-profit entities.”*⁸

In exercising its powers and functions under the Act, the ACNC must have regard to the principles of regulatory necessity, regulatory risk and proportionate regulation. The ACNC must:

*“cooperate with other Australian government agencies; and administer effectively the laws that confer functions and powers on the Commissioner; (including in order to minimise procedural requirements and procedural duplication).”*⁹

Granting our proposed exemption would be consistent with the ACNC’s legal obligations to cooperate with other government agencies to streamline regulatory obligations, simplify record keeping and reporting, and minimise procedural requirements and duplication.

Not granting the exemption would be inconsistent with the Division 15-10 (e) and (f) requirements the ACNC is required to consider under the Act:

- it would demonstrate non-cooperation between TEQSA and the ACNC in regulating the university sector;
- it would impose additional, complicated, burdensome and unnecessary regulatory obligations on the university sector;
- it would impose disproportionate regulations on the university sector where there is no necessity or regulatory risk to be addressed by the ACNC given the role of TEQSA in fully regulating the sector; and
- it would result in the ACNC duplicating the current regulatory role and procedural requirements of TEQSA and DIISRTE.

⁷ See section 45-10 (5) of the ACNC Act 2012.

⁸ See Division 10-5 of the ACNC Act 2012.

⁹ See Section 15-10 (e) and (f) of the ACNC Act 2012.

The ACNC should exempt universities from providing financial reports

Under the ACNC Act registered entities with annual revenue over \$1 million are required to provide annual financial reports to the ACNC.

However, the ACNC may allow reports given under an Australian law to an Australian government agency, including both Commonwealth and State agencies, to be a financial report under the ACNC Act until to the 2014-15 financial year (or later year prescribed by regulation).¹⁰ The matters the ACNC is required to consider in allowing such reports include:

- whether the document contains the information required under the ACNC Act;
- the processes taken to verify the information in the report, such as whether it has been subject to audit or review.

The purpose of this provision is:

“to enable the ACNC Commissioner to address potential reporting duplication during the process of establishing the ACNC as a one-stop shop regulator.”¹¹

Universities are already required to provide detailed annual financial reports to DIISRTE

Each year Australian universities are required to prepare Annual Financial Statements and submit the reports to DIISRTE under section 19-10(2) of the Higher Education Support Act 2003 (HESA), section 108 of the Higher Education Funding Act 1988 (HEFA) and section 58 of the Australian Research Council Act 2001 (ARCA).

It is a condition of receipt of financial assistance from the Australian Government under these Acts that universities provide annual financial statements in a form approved by the Minister. Failure to do so can result in a withdrawal of Government funding.

Each year DIISRTE prepares “Guidelines for the Preparation of Annual Financial Statements by Australian Higher Education Institutions” (Guidelines), which prescribes the form of the financial statements approved by the Australian Government under the HESA, HEFA and ARCA Acts.

The Guidelines comprise over 130 pages of comprehensive guidance as to the detailed financial information to be included, how it is to be reported, and the necessary auditing and verification that is required.

These Annual Financial Statements submitted to DIISRTE:

“are intended to meet the financial reporting requirements of the Australian Government and State/Territory agencies.”¹²

Hence, given these financial reports submitted to DIISRTE are intended to fully meet universities financial reporting obligations to Government, the ACNC should allow these reports to be a financial report under the ACNC Act. The ACNC should not require universities to undertake any additional or further financial reporting obligations to the ACNC.

TEQSA has exempted universities from providing financial statements directly to TEQSA on the grounds that they are already provided to DIISRTE, which provides a good example for the ACNC to follow.

¹⁰ See Chapter 14 of the ACNC Consequential and Transitional Bill at 14.30 to 14.35.

¹¹ See 14.31.

¹² See “Finance 2011, Financial Reports of Higher Education Providers”, October 2012 at Section 1.3.

Allowing such reports to satisfy ACNC financial reporting requirements will promote the objectives of the Act the ACNC is required to consider:

- it would address the issue of unnecessary reporting duplication, which would arise if the ACNC required separate financial statements to be submitted to it;
- it would streamline and simplify university reporting requirements;
- it would minimise procedural requirements and procedural duplication; and
- it would promote the reduction of unnecessary regulatory obligations on the not-for-profit sector.

Not allowing the financial reports submitted to DIISRTE to satisfy the ACNC reporting requirements would be inconsistent with the objectives of the Act.

A single national data collection/repository for universities

The Government is working on a project to streamline university reporting requirements where there will be a single national data collection/repository of higher education information, likely to be administered by DIISRTE.

Other Government agencies wishing to obtain university information will link up to the database, and if they require further reporting information would put such requests through the national data collection agency.

The single national data collection means universities would not be required to provide the same, or very similar, information reports to multiple government agencies, saving considerable costs. And there would be consistency across government agencies on the information to be reported by universities.

If the ACNC required universities to separately report financial information to the ACNC, duplicating current DIISRTE reporting requirements, it would be inconsistent with the Government's objective to move to a single national data collection/repository that streamlines and homogenises university reporting to Government.

The exemption proposals are win-win for the ACNC, universities and society

The request to the ACNC to exempt universities from governance standards and financial reporting requirements will be a win-win for the ACNC, the university sector and society:

- over 56,000 entities have registered with the ACNC. Our proposals allow the ACNC to focus its regulatory efforts to that part of the charity sector where further oversight and investigation may be required, and not expend resources in areas already thoroughly regulated and where there is no community benefit from such expenditure.
- Universities costs will be lowered by not having to comply with new and unnecessary regulatory obligations and reporting. Universities will therefore spend more money on teaching and research, activities that enhance community welfare.
- Society wins from the better targeting of regulation where it may be required, better coordination and cooperation across government, and preventing the needless duplication of regulatory functions amongst government agencies.